

5-9-2011

# CDA Dairy Queen, Inc. v. State Ins. Fund Clerk's Record v. 1 Dckt. 38492

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LAW CLERK

Vol. 1 of 3

(VOLUME 1)

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

LAW CLERK

**CDA DAIRY QUEEN, INC., and  
DISCOVERY CARE CENTRE, LLC  
OF SALMON,**

**Plaintiffs-Appellants,**

**-vs-**

**SEE AUGMENTATION RECORD**

**THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, in his official  
capacity as its Manager, and WILLIAM  
DEAL, WAYNE MEYER, GERALD GEDDES,  
JOHN GOEDDE, ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN and MAX BLACK and  
STEVE LANDON in their capacity as  
Members of the Board of Directors of the  
State Insurance Fund,**

**Defendants-Respondents.**

**Appealed from the District of the Third Judicial District  
for the State of Idaho, in and for Canyon County**

**Honorable RENAE J. HOFF, District Judge**

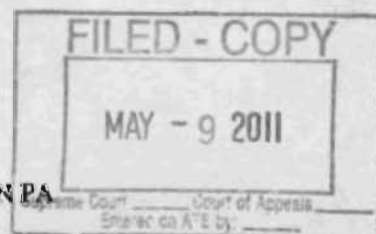
**Donald W. Lojek  
Lojek Law Offices**

**Philip Gordon and Bruce S. Bistline  
GORDON LAW OFFICES**

**Attorneys for Appellants**

**Richard E. Hall and Keely E. Duke  
HALL FARLEY OBERRECHT & BLANTON PA**

**Attorneys for Respondents**



38492

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

CDA DAIRY QUEEN, INC., and )  
DISCOVERY CARE CENTRE, LLC )  
OF SALMON, )

Plaintiffs-Appellants, )

-vs- )

THE IDAHO STATE INSURANCE FUND, )  
JAMES M. ALCORN, in his official )  
capacity as its Manager, and WILLIAM )  
DEAL, WAYNE MEYER, GERALD GEDDES, )  
JOHN GOEDDE, ELAINE MARTIN, MARK )  
SNODGRASS, RODNEY A. HIGGINS, )  
TERRY GESTRIN and MAX BLACK and )  
STEVE LANDON in their capacity as )  
members of the Board of Directors of the )  
State Insurance Fund, )

Defendants-Respondents. )

Supreme Court No. 38492

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE RENAE J. HOFF, Presiding

Donald W. Lojek, Lojek Law Offices

Philip Gordon and Bruce S. Bistline, GORDON LAW OFFICES

Attorneys for Appellants

Richard E. Hall and Keely E. Duke, HALL FARLEY OBERRECHT & BLANTON PA

Attorneys for Respondents

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| 12/24/2009 | New Case Filed-Other Claims<br>Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Lojek, Donald W (attorney for CDA DAIRY QUEEN INC) Receipt number: 0436725 Dated: 12/24/2009 Amount: \$88.00 (Check) For: CDA DAIRY QUEEN INC (plaintiff)  | Renae J. Hoff<br>Renae J. Hoff                                 |
| 6/10/2010  | First Amended Class Action Complaint and Demand for Jury Trial Filed<br>Summons Issued x 15   | Renae J. Hoff<br>Renae J. Hoff                                 |
| 6/15/2010  | Amended Summons Issued (14)   | Renae J. Hoff  |
| 6/18/2010  | Acceptance of Service-Idaho State Insurance Fund & James Alcorn<br>6-16-10 (fax)  | Renae J. Hoff  |
| 7/1/2010   | Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: HALL FARLEY Receipt number: 0041609 Dated: 7/1/2010 Amount: \$58.00 (Check) For: Alcorn, James M (defendant), Black, Max (defendant), Deal, William (defendant), Geddes, Gerald (defendant), Gestrin, Terry (defendant), Goedde, John (defendant), Higgins, Rodney A (defendant), Landon, Steve (defendant), Martin, Elaine (defendant), Meyer, Wayne (defendant), Snodgrass, Mark (defendant) and The Idaho State Insurance Fund (defendant)<br>Answer (all defendants) | Renae J. Hoff<br><br><br><br><br><br><br><br><br>Renae J. Hoff |
| 7/9/2010   | Motion to Strike Defendants' Fourteenth Defense<br>Memorandum in Support of Motion to Strike Defendants' Fourteenth Defense   | Renae J. Hoff<br>Renae J. Hoff                                 |
| 7/13/2010  | Notice Of Hearing 8-19-10 (not a good date)   | Renae J. Hoff  |
| 7/14/2010  | Motion to Strike Defendants' Fourteenth Defense<br>Memorandum in Support of Motion to Strike Defendants' Fourteenth Defense   | Renae J. Hoff<br>Renae J. Hoff                                 |
| 7/20/2010  | Hearing Scheduled (Motion Hearing 08/26/2010 09:00 AM) pltf motn strike def 14th defense<br>Amended Notice of Hearing 8/26/2010 (fax)   | Renae J. Hoff<br>Renae J. Hoff                                 |
| 7/21/2010  | First Amended Answer to Plts First Amended Class Action Complaint and Demand for Jury Trial   | Renae J. Hoff  |
| 8/19/2010  | Opposition to plaintiffs' motion to strike defendants' fourteenth defense   | Renae J. Hoff  |
| 8/24/2010  | Hearing result for Motion Hearing held on 08/26/2010 09:00 AM: Hearing Vacated pltf motn strike def 14th defense  | Renae J. Hoff  |
| 8/26/2010  | Notice vacating and resetting hearing on plaintiff's motion to strike fourteenth defense<br>Hearing Scheduled (Motion Hearing 09/17/2010 09:00 AM)  | Renae J. Hoff<br>Renae J. Hoff                                 |
| 9/9/2010   | Plaintiffs' response to defendants' reply memorandum  | Renae J. Hoff  |
| 9/16/2010  | Notice of Service: Plaintiffs' first set of requests for admission No: 1-78<br>Affidavit Of Service 8/30/2010- Lawrence, Idaho Attorney General, Michael, and Deputy Attorney General   | Renae J. Hoff<br>Renae J. Hoff                                 |
| 9/17/2010  | Hearing result for Motion Hearing held on 09/17/2010 09:00 AM: Motion Denied - to strike plnts 14th Affirmative Defense   | Renae J. Hoff  |

000001



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| 9/17/2010  | Hearing result for Motion Hearing held on 09/17/2010 09:00 AM: District Court Hearing Held<br>Court Reporter: Carole Bull<br>Number of Transcript Pages for this hearing estimated: less than 100 pages | Renae J. Hoff |
| 9/22/2010  | Acknowledgement of Service  | Renae J. Hoff |
|            | Affidavit Of Service  | Renae J. Hoff |
| 9/23/2010  | Motion for Partial Summary Judgment   | Renae J. Hoff |
|            | Affidavit of Donald W Lojek in Support of Plaintiffs Motion for Partial Summary Judgment  | Renae J. Hoff |
|            | Affidavit of Philip Gordon in support of Plaintiffs Motion for Partial Summary Judgment   | Renae J. Hoff |
|            | Memorandum in support of plaintiffs motion for Partial summary judgment   | Renae J. Hoff |
|            | Notice Of Service   | Renae J. Hoff |
| 9/28/2010  | Order denying plaintiffs' motion to strike defendants' fourteenth defense   | Renae J. Hoff |
| 9/30/2010  | Defendants Motion for Protective Order and for Stay of Discovery (fax)  | Renae J. Hoff |
|            | Notice Of Hearing on Defendants Motion for Protective Order and for Stay of Discovery 10-21-10 (fax)  | Renae J. Hoff |
|            | Hearing Scheduled (Motion Hearing 10/21/2010 09:00 AM) defs motn for protective order & for stay of discovery   | Renae J. Hoff |
|            | Notice Of Hearing 11-23-10  | Renae J. Hoff |
|            | Hearing Scheduled (Motion Hearing 11/23/2010 09:00 AM) plts motn for summ judg  | Renae J. Hoff |
| 10/6/2010  | Acknowledgement of Service  | Renae J. Hoff |
| 10/8/2010  | Memorandum in support of defendants motion (fax)  | Renae J. Hoff |
|            | Affidavit of counsel in support of motion   | Renae J. Hoff |
| 10/12/2010 | Amended Memorandum in support of plaintiff's motion for partial summary judgment  | Renae J. Hoff |
| 10/14/2010 | Memorandum in response to memo in support of def's motn protective order/stay of discovery  | Renae J. Hoff |
|            | Affidavit of Bruce S Bistline Re: Def's motion protective order/stay of discovery   | Renae J. Hoff |
|            | Affidavit of Philip Gordon Re: Def's motn for protective order/stay of discovery  | Renae J. Hoff |
| 10/18/2010 | Plaintiff's Motion for partial summary judgment on defendants 14th affirmative defense  | Renae J. Hoff |
|            | Memorandum in support of motion   | Renae J. Hoff |
|            | Notice Of Hearing 11/23/2010  | Renae J. Hoff |
| 10/19/2010 | Defendants reply in support of motion for protective order and for stay of discovery (fax)  | Renae J. Hoff |
| 10/21/2010 | Motion to import discovery from prior case  | Renae J. Hoff |
|            | Affidavit of Philip Gordon in support of motion to import discovery   | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 10/21/2010 09:00 AM: Motion Granted defs motn for protective order & for stay of discovery  | Renae J. Hoff |

## Other Claims

| Date       |  | Judge         |
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| 10/21/2010 | Hearing result for Motion Hearing held on 10/21/2010 09:00 AM: District Court Hearing Held<br>Court Reporter: Carole Bull<br>Number of Transcript Pages for this hearing estimated: less than 100 pages            | Renae J. Hoff |
| 10/25/2010 | Hearing Scheduled (Motion Hearing 12/21/2010 09:00 AM) pltf motn import discovery  | Renae J. Hoff |
|            | Notice Of Hearing 12/21/2010   | Renae J. Hoff |
| 10/26/2010 | Affidavit of James M Alcorn in Support of Defendants' Motion for Summary Judgment (fax)  | Renae J. Hoff |
|            | Defendants Motion for Summary Judgment   | Renae J. Hoff |
|            | Affidavit of Counsel in Support of Defendants Motion for Summary Judgment  | Renae J. Hoff |
|            | Memorandum in Support of Defendants Motion for Summary Judgment  | Renae J. Hoff |
|            | Notice Of Hearing on Defendants Motion for Summary Judgment 11-23-10   | Renae J. Hoff |
| 10/29/2010 | Defendants notice of errarum re: memorandum in support of defendants motion for summary judgment (fax)   | Renae J. Hoff |
| 11/2/2010  | Order granting def's motion for protective order and stay of discovery   | Renae J. Hoff |
| 11/12/2010 | Stipulation vacating summary judgment hearing on 11/23/2010  | Renae J. Hoff |
|            | Notice vacating hearing on 11/23/2010  | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 11/23/2010 09:00 AM: Hearing Vacated plts motn for summ judg/defs motn for summ judg   | Renae J. Hoff |
|            | Hearing Scheduled (Motion Hearing 12/15/2010 09:00 AM) pltf motn summary judg  | Renae J. Hoff |
| 11/22/2010 | Motion to Strike the Affidavit of James M Alcorn and Selected Exhibits Attached to the Affidavit of Counsel Both of Which were Filed in Support of Defendants Motion for Summary Judgment                          | Renae J. Hoff |
|            | Memorandum in Support of Motion to Strike the Affidavit of James M Alcorn and Selected Exhibits Attached to the Affidavit of Counsel Both of Which were Filed in Support of Defendants Motion for Summary Judgment | Renae J. Hoff |
|            | Plaintiffs Motion Pursuant to Rule 56 (f) to Vacate Defendants Motion for Summary Judgment and to Continue that Motion Pending Discovery by Plaintiffs   | Renae J. Hoff |
|            | Affidavit of Philip Gordon in Support of Plaintiffs Motion Pursuant to Rule 56(f) to Vacate Defendants Motion for Summary Judgment and to Continue that Motion Pending Discovery by Plaintiffs                     | Renae J. Hoff |
|            | Plaintiffs Memorandum in Support of Plaintiffs Motion Pursuant to Rule 56(f) to Vacate Defendants Motion for Summary Judgment and to Continue That Motion Pending Discovery by Plaintiffs                          | Renae J. Hoff |
|            | Notice Of Hearing 12-15-10   | Renae J. Hoff |
|            | Opposition to Pltf's motion for partial summary Jmt  | Renae J. Hoff |
|            | Affidavit of counsel in opposition to pltf's motion for partial summary Jmt  | Renae J. Hoff |
| 11/30/2010 | Affidavit of Philip Gordon Re: Defendants Motion for Summary Judgment  | Renae J. Hoff |
|            | Memorandum in Opposition to Defendants Motion for Summary Judgment   | Renae J. Hoff |

## Other Claims

| Date       |   | Judge         |
|------------|---|---------------|
| 12/3/2010  | Opposition to Pltf's motn to vacate def's motn for summary jmt/continue motion pending discovery by pltf's  | Renae J. Hoff |
|            | Affidavit of counsel in opposition to Pltf's motn to vacate def's motn summary jmt/continue motn pending discovery by pltf's  | Renae J. Hoff |
|            | Opposition to pltf's motn to strike affd of James M Alcorn/selected exhibit   | Renae J. Hoff |
| 12/6/2010  | Reply in Support of Defendant's Motion for Summary Judgment   | Renae J. Hoff |
|            | Reply Memorandum in support of pltf's motn for partial summary Jmt  | Renae J. Hoff |
|            | Second affidavit of Donald W Lojeck in support pltf's motn summary Jmt  | Renae J. Hoff |
| 12/8/2010  | Defendants Notice of errata re: pending motions (fax)   | Renae J. Hoff |
| 12/9/2010  | Unified Reply Memorandum Re: Motion to Strike the Affidavit of James M Alcorn and Selected Exhibits Attached to the Affidavit of Counsel and Motion Pursuant to 56(f) to Vacate Defendants Motion for Summary Judgment  | Renae J. Hoff |
| 12/15/2010 | Notice Vacating and Resetting Pltf's Motn to import discovery from Prior Case   | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 12/21/2010 09:00 AM: Hearing Vacated pltf motn import discovery   | Renae J. Hoff |
|            | Hearing Scheduled (Motion Hearing 01/27/2011 09:00 AM) Pltf's motn to Import discovery prior case   | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 12/15/2010 09:00 AM: Motion Granted defs motn summary judg  | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 12/15/2010 09:00 AM: District Court Hearing Held<br>Court Reporter: Carole Bull<br>Number of Transcript Pages for this hearing estimated: less than 100 pages   | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 12/15/2010 09:00 AM: Motion Denied pltf partial motn for summary judg   | Renae J. Hoff |
| 12/28/2010 | Order   | Renae J. Hoff |
| 1/4/2011   | Judgment  | Renae J. Hoff |
|            | Civil Disposition entered for: Alcorn, James M, Defendant; Black, Max, Defendant; Deal, William, Defendant; Geddes, Gerald, Defendant; Gestrin, Terry, Defendant; Goedde, John, Defendant; Higgins, Rodney A, Defendant; Landon, Steve, Defendant; Martin, Elaine, Defendant; Meyer, Wayne, Defendant; Snodgrass, Mark, Defendant; The Idaho State Insurance Fund, Defendant; CDA DAIRY QUEEN INC, Plaintiff. Filing date: 1/4/2011 | Renae J. Hoff |
|            | Hearing result for Motion Hearing held on 01/27/2011 09:00 AM: Hearing Vacated Pltf's motn to Import discovery prior case   | Renae J. Hoff |
|            | Case Status Changed: closed   | Renae J. Hoff |
| 1/7/2011   | Defendants Motion for Award of Costs (fax)  | Renae J. Hoff |
|            | Defendants Verified Memorandum of Costs (fax)   | Renae J. Hoff |
|            | Affidavit of Counsel in Support of Defendants' Verified Memorandum of Costs (fax)   | Renae J. Hoff |
| 1/25/2011  | Notice of non-opposition to request for award of costs (fax)  | Renae J. Hoff |

000004

Other Claims

| Date      |   | Judge         |
|-----------|---|---------------|
| 1/27/2011 | Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Lojek, Donald W (attorney for CDA DAIRY QUEEN INC) Receipt number: 0085768 Dated: 1/27/2011 Amount: \$101.00 (Check) For: CDA DAIRY QUEEN INC (plaintiff) | Renae J. Hoff |
|           | Bond Posted - Cash (Receipt 85769 Dated 1/27/2011 for 100.00) for clerks record   | Renae J. Hoff |
|           | Case Status Changed: Closed pending clerk action  | Renae J. Hoff |
|           | Appellants Notice of Appeal   | Renae J. Hoff |
|           | Appealed To The Supreme Court   | Renae J. Hoff |

**F I L E D**  
1130 A.M. P.M.

DEC 24 2009

CANYON COUNTY CLERK  
T EARLS, DEPUTY

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Attorneys for Plaintiffs and the Class

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC.,  
Plaintiffs,

vs.

THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, its Manager, and  
WILLIAM DEAL, WAYNE MEYER,  
GERALD GEDDES, JOHN GOEDDE,  
ELAINE MARTIN, and MARK  
SNODGRASS in their capacity as member of  
the Board of Directors of the State Insurance  
Fund

Defendants.

CASE NO. CV 09- 13607-C

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

COME NOW THE PLAINTIFFS, ON BEHALF OF THEMSELVES AND ANY AND ALL PERSONS AND ENTITIES SIMILARLY SITUATED, AND FOR THEIR CAUSE OF ACTION AGAINST THE DEFENDANTS, DO HEREBY STATE, ALLEGE AND COMPLAINT AS FOLLOWS:

### INTRODUCTION

This is a class action brought on behalf of the named Plaintiffs and a class of persons and entities who, at any time during the preceding five years, were subscribers of the Idaho State Insurance Fund (hereinafter “the Fund”), who have paid annual premiums in an amount in excess of \$2,500.00 (two thousand five hundred dollars) (hereinafter “larger subscriber) and who, despite being lawfully entitled to receive a dividend when the payment of a dividend was determined to be appropriate by the Manager and/or the Board of Directors of the fund, have either not received any dividend in one or more years when other Fund subscribers whose annual premiums have exceeded \$2,500.00 received a dividend or, alternatively, did not receive a *pro rata* share of the dividend monies distributed by the Fund. The determination that the Fund would pay dividends to some but not all of the Fund subscribers or to some but not on a *pro rata* basis appears to have been made by the Fund’s appointed Manager, James M. Alcorn (hereinafter either “Alcorn” or “the Manager”) but it may also have been made by or with the approval of the Board of Directors of the Fund. The payment of dividends by the Fund to Plaintiffs and their Class was not in accordance with Idaho law. The named Plaintiffs and the members of the Class are seeking first a declaratory judgment ordering and adjudging that the Fund acted in direct

contravention of its statutory and contractual authority when it determined that dividends would either not be paid to subscribers who losses exceeded their annual premium or to subscribers on a less than *pro rata* share.

Second, Plaintiffs and the members of the Class are seeking injunctive relief enjoining the Defendants from paying out dividends to subscribers in a manner which is contrary to law and the terms of the contract between the Fund and to subscribers.

Third, the named Plaintiffs and the members of the Class are asking the Court to award them damages in an amount equal to the dividends which they should have had paid or credited to them during each of the five years preceding the filing of this Complaint for or in respect to which the Fund issued dividends improperly.

## **PART I: PARTIES**

### **1.**

All of the named Plaintiffs are now and during some or all of the years comprising the class period have been conducting business in the State of Idaho. All of the named Plaintiffs have during some or all of such period had one or more employees whom they have been required by law to provide with worker's compensation insurance coverage. All of the named Plaintiffs have, during some or all of the class period, subscribed to the Fund for the purpose of obtaining their worker's compensation insurance coverage.

### **2.**

Plaintiffs reside and do business in Idaho as follows:

- a. Plaintiff CDA Dairy Queen, Inc. is a corporation doing business in Kootenai

County.

3.

At all times material and relevant to this action the State of Idaho has had in force and effect a comprehensive worker's compensation statutory scheme which, as set forth in I.C. 72-203, applies to "all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code". These statutes establishing this system, and, *inter alia*, creating the Fund, are found in Title 72 of the Idaho Code.

4.

The Defendant Fund is "an independent body corporate politic" created by statute (specifically, Idaho Code § 72-901) for the purpose of insuring employers against liability for compensation under the worker's compensation and occupational injury laws of the State of Idaho. The Fund is administered without liability on the part of the state of Idaho.

5.

The Fund is governed by a board of five directors (hereinafter "the Board"), all of whom are appointed by the governor. Defendants William Deal (2000 to 2007), Wayne Meyer (2000 to 2004), Gerald Geddes (2000 to 2007), John Goedde (part of 2001 to current), Elaine Martin (2004 to 2007) and Mark Snodgrass (2005 to 2008), Rodney A. Higgins (2007 to current), Terry Gestrin (2008 to current), Max Black (2009 to current) and Steve Landon (2008 to current) served on during the years noted as members of the Board.

6.

The members of the Board appoint a Manager of the Fund who serves at their pleasure



(Idaho Code § 72-901). The Defendant Alcorn is now and at all times relevant hereto was the duly appointed and acting Manager of the Defendant Fund.

## **PART II: FACTUAL ALLEGATIONS**

7.

The Fund is the single largest issuer of worker's compensation insurance in the State of Idaho. In recent years both the number of worker's compensation policies issued by the Fund and the total amount of premiums collected by it for the issuance of such coverage have grown. The Fund's reports reflect that its surplus and its reserves have also grown over this same period of time.

8.

Until May 6, 2009, Idaho Code § 72-915 provided as follows:

At the end of every year, and as such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

This statute provided the sole and exclusive authority under and pursuant to which the Fund can lawfully pay dividends to its subscribers. This statute did not provide the Manager any authority whatsoever to distinguish among subscribers or to pay dividends based upon whether a subscriber has paid some threshold amount of annual premium. This statute was repealed retroactively in 2009, but such repeal was unconstitutional, null, void and of no effect as to

policies in existence prior to the effective date of the repeal.

**9.**

During some or all of the policy periods beginning on July 1, 2002 or after and continuing to all policy periods beginning prior to July 1, 2009 (herein the “class period”) the Fund has paid a dividend to some subscribers. The payment of such dividends was made after the Board or the Manager determined that it was appropriate for the Fund to pay a dividend. In all cases the amount of the dividend has been a percentage of the annual premium (adjusted for losses, expenses and other factors) paid by each subscriber considered to be qualified to receive a dividend and the dividend has been paid without regard to class of employment or industry.

**10.**

For all years in the class period, the Manager and/or the Board arbitrarily, capriciously, and without any statutory or contractual authority whatsoever, determined that such dividends would not be paid to larger subscribers on a *pro rata* basis or to subscribers incurring losses during the dividend period.

**11.**

Each of the Plaintiffs now, and at all times material and relevant hereto, has had one or more employees – not expressly exempted by section 72-212 – for whom such Plaintiff is statutorily required at all times to keep and maintain in force a policy of worker’s compensation insurance.

**12.**

Each Plaintiff now, and for all or portions of the class period, has obtained worker’s compensation insurance coverage applicable to non-exempt employees by subscribing to the

Fund.

**13.**

For some or all of the years in the class period, all of the Plaintiffs paid annual premiums to the Fund which were in excess of \$2,500.00 and, for each such year, those Plaintiffs either did not receive a dividend because of losses and/or did not receive at least a *pro rata* share of the dividend distributed by the Fund.

**PART III: CLASS ACTION ALLEGATIONS**

**14.**

Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b) of the Idaho Rules of Civil Procedure individually and on behalf of a class of similarly situated persons and entities.

**15.**

The Class shall include all Idaho employers who: a.) were larger subscribers to the Fund (i.e. purchased worker's compensation insurance from the Fund); b.) for one or more policy years during the class period and were charged an annual premium for such insurance to the Fund which was more than \$2,500.00; and, c.) on one or more instances during the Class Period when the Manager or the Fund determined that payment of a dividend was appropriate and acted to distribute that dividend to qualified subscribers, did not receive a dividend which was at least equal to a *pro rata* share of the total amount distributed based upon the amount of premiums charged to each of them.

**16.**

The Class is so numerous that joinder of all members of the Class as Plaintiffs herein is

impracticable. The number of policies issued by the Fund for the year 2002 totaled 29,789. This figure rose to 32,320 in the year ended December 31, 2003. On information and belief, Plaintiff alleges that the total number of policies issued by the Fund also exceeded 30,000 for 2004 and 2005 and was even greater in subsequent years.

**17.**

The claims of the named Plaintiffs are typical of the claims of all members of the Class, and all members of the Class sustained damages arising out of the same wrongful conduct of the Defendants.

**18.**

The named Plaintiffs will fairly and adequately protect the interests of the Class. They have retained counsel who are competent and experienced in class action litigation. Their counsel have among them over 90 years of experience practicing law in State and Federal Courts in Idaho and other jurisdictions and they have been involved in and processed to recovery numerous class action lawsuits.

**19.**

A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Joinder of all members of the Class is impractical because the members number in the tens of thousands and they reside (or have their principal place of business) throughout the entire State of Idaho. It would also be impracticable for each member of the Class to bring separate actions because the individual damages of any one Class member will be relatively small when measured against the potential costs of bringing this action, making the expense and burden of this litigation unjustifiable for individual actions. In this class action, the

court can determine the rights of the named Plaintiffs and all members of the Class with judicial economy. The named Plaintiffs do not anticipate any difficulty in the management of this suit as a class action.

**20.**

The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant.

**21.**

The Defendant has acted on grounds which are universally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

**22.**

There are numerous common questions of law and fact that exist as to all members of the Class and they clearly predominate over any questions affecting solely individual members of the Class. These questions include, but are not limited to, the following:

- a. Whether during the class period the individual class member has been a subscriber to the Fund.
- b. Whether, during one of more of those years, the individual class member paid an annual premium in excess of \$2,500.00 for a policy of workers compensation coverage.
- c. Whether the Fund's failure to pay a *pro rata* dividend to those subscribers whose annual premium for that year equaled or was greater than \$2,500.00

was contrary to the law and the terms of the contract between the Fund and its subscribers.

- d. Whether, during one or more years included in the class period, a Plaintiff or an individual member of the class was a subscriber entitled to a dividend on a *pro rata* basis once the manager had determined it was appropriate to pay dividends.
- e. Whether the retroactive repeal of I.C. § 72-915 in 2009 was unconstitutional.
- f. How the dividends to be paid to each such subscriber shall be calculated for each such year.
- g. Whether one or more of the Defendants must pay the Plaintiffs and members of the class interest on such sums as the Fund should have paid to them for each year during the class period.
- h. If the Plaintiffs and the members of the class are entitled to recover interest, then it will be necessary to determine the applicable rate of interest and the date or dates from which interest will be assessed.
- i. Whether the members of the class are entitled to an order enjoining the Defendants from, in future years, reducing dividends because of incurred losses or refusing to pay to the larger subscribers less than a *pro rata* share of the dividend monies distributed by the Fund.
- j. Whether the members of the Class are entitled to recovery of attorney's fees for the Defendants.

**COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS**

**23.**

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment pursuant to Idaho Code title 10, chapter 12.

**24.**

There is an actual controversy within the jurisdiction of this Court and declaratory relief will provide an effective and efficacious means for terminating uncertainty and resolving controversy by adjudicating the rights and interests of the parties with respect to the following acts and events:

- a.) One or more of the Defendants have, for each annual policy issued during the class period, used an unlawful, arbitrary and/or improper benchmark or calculation to determine which of its subscribers were entitled to receive a dividend and, as a consequence, have denied appropriate dividends to subscribers who were otherwise lawfully entitled to receive a dividend once the Manager or the Fund determined that it was appropriate to pay dividends.
- b.) One or more of the Defendants will, absent an order from this Court, continue to use an unlawful, arbitrary, and/or improper benchmark or calculation to determine which of the Fund's subscribers are entitled to receive a dividend
- c.) For each of the years in the class period, the Plaintiffs and members of the class have not received appropriate dividends when dividends have been paid out by the Fund

and they will, absent an order from this Court, continue to be denied the appropriate dividends which are due to them.

**25.**

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that the acts and actions of one or more of the Defendants, as set forth in this Complaint, are not now and, at no time during the class period, have been lawful, and that such acts and actions are in derogation of the contractual and statutory provisions authorizing the Defendants to declare and pay dividends to its subscribers.

**26.**

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that by reason of the conduct alleged herein one or more of the Defendants should also pay interest on all amounts found due to any Plaintiff or class member as unpaid dividends from the date(s) that such dividend(s) should have been paid to the date of judgment herein. The Court has the authority to determine the applicable rates of interest.

**27.**

This Court has the authority to make all such other, further and additional rulings as are needed fully and completely to resolve any and all issues that are raised by this Complaint.

**28.**

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.



**COUNT II: DECLARATORY RELIEF — INJUNCTION**

**29.**

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment providing for injunctive relief, pursuant to Idaho Code title 10, chapter 12.

**30.**

This Court has the authority to declare that, under the circumstances set forth above, the Defendants have acted in violation of Idaho law and the provisions of the contract between the Fund and its subscribers. This Court may, therefore, order that the Defendants should be permanently enjoined from conditioning any future distribution of dividends to its subscribers on less than a *pro rata* basis and from reducing or eliminating dividend payments because of incurred losses.

**31.**

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

**COUNT III: DAMAGES**

**32.**

Plaintiffs reallege the allegations contained in Paragraphs 1. through and including 32. of

this Complaint, and incorporate the same by reference herein.

**33.**

For each annual policy issued during the class period for which each Plaintiff and each and every member of the class was entitled to but did not receive an appropriate dividend, such Plaintiffs and class members have been damaged by the acts and actions of the Defendants as set forth herein. The amount of the damages sustained by each Plaintiff and each and every member of the class is easily ascertainable. It is equal to the amount of the dividend which should have been, but was not, paid to each such Plaintiff and each such member of the class reduced by the amount of dividend actually paid. These damages should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

**34.**

For each year during the class period, Plaintiffs and the members of the class are entitled to pre-judgment interest on the dividends that were not paid, commencing on the date that dividends were checks issued to the Fund's subscribers and continuing to the date of judgment. Interest should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

**35.**

Plaintiffs have been required to engage the services of the attorneys named in this Complaint in order to represent them and the members of the class in connection with this action. Plaintiffs should be awarded the attorneys fees and costs which they incur in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

1. That the Court certify the class as herein above requested and conduct proceedings to establish an appropriate class notice and method of sending notice to the class;
2. That the retroactive repeal of I.C. § 72-915 by the 2009 legislature be deemed to be unconstitutional as to all policies issued prior to July 1, 2009.
3. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205, that the Defendants do not now have, and at all times material and relevant to this action, did not have any lawful or contractual authority to fail to pay larger subscribers on a *pro rata* basis or to take into consideration incurred losses when calculating the amount of dividends to be paid to each larger subscriber.
4. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, it was wrongful for one or more of the Defendants to cause the Fund to fail or refuse to pay appropriate dividends to the larger subscribers.
5. That the Court find and rule that the Plaintiffs and the members of the class were damaged by the acts and actions of one or more of the Defendants and that the amount of the damages sustained by each Plaintiff and each member of the Class is the total dividends which such Plaintiff or such class member should have received but did not receive from the Defendants during the class period, together with pre-judgment interest thereon.
6. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period as herein defined one or more of the

Defendants must, to the extent that the Fund failed to do so, pay to the Plaintiffs and the members of the Class the difference between the dividend that each is otherwise qualified to receive for each year in which each Plaintiff and each member of the class was a subscriber to the Fund and the dividend that each did receive. This dividend should be on a pro rata basis with no adjustment for incurred losses.

7. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, that one or more of the Defendants must pay to the Plaintiffs and the members of the class, pre-judgment interest on such sums as are found to be due.
8. That the Court ascertain the correct rate of interest to be applied and make all determinations necessary to compute the dividends and interest that is due to the Plaintiffs and members of the class in connection with any and all dividends which were wrongfully withheld from or not fully paid to them at any time after the commencement of the class period.
9. That the Court enter a temporary injunction, enjoining the Defendants from paying less than *pro rata* dividends to some, but not all of its subscribers whose policies were issued prior to July 1, 2009, based either upon the total amount of the annual premium charged to such subscriber in the year to which such dividends are attributable.
10. That the Court make all such other, further and additional rulings as are needed in order to fully and completely resolve any and all issues that are raised by this Complaint.
11. That the Court order one or more of the Defendants to pay the attorney's fees and costs incurred by the Plaintiffs and members of the class in connection with this action.

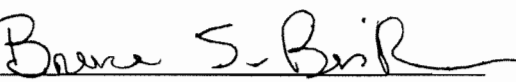
12. For such other and further relief as is just and equitable in the premises.

DATED This 24<sup>th</sup> day of December, 2009.

LOJEK LAW OFFICES, CHTD.

By   
Donald W. Lojek

GORDON LAW OFFICES

By   
Bruce S. Bistline

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on any and all issues properly triable by jury in this action.

  
Donald W. Lojek  
Attorney for Plaintiffs

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Attorneys for Plaintiffs and the Class

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and  
DISCOVERY CARE CENTRE, LLC OF  
SALMON,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, in his official capacity  
as its Manager, and WILLIAM DEAL,  
WAYNE MEYER, GERALD GEDDES,  
JOHN GOEDDE, ELAINE MARTIN,  
MARK SNODGRASS, RODNEY A.  
HIGGINS, TERRY GESTRIN AND MAX  
BLACK AND STEVE LANDON in their  
capacity as member's of the Board of  
Directors of the State Insurance Fund,

Defendants.

CASE NO. CV 09-13607-C

**FIRST AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**F I L E D**  
A.M. 10:05 P.M.  
JUN 10 2010  
CANYON COUNTY CLERK  
C DOCKINS, DEPUTY

COME NOW THE PLAINTIFFS, ON BEHALF OF THEMSELVES AND ANY AND ALL PERSONS AND ENTITIES SIMILARLY SITUATED, AND FOR THEIR CAUSE OF ACTION AGAINST THE DEFENDANTS, DO HEREBY STATE, ALLEGE AND COMPLAIN AS FOLLOWS:

### INTRODUCTION

This is a class action brought on behalf of the Plaintiffs and a class of persons and entities (hereinafter “the Class”). During the “Class Period” (as defined below in Paragraph 12), Plaintiffs and persons and entities qualified to be members of the Class entered into contracts to secure worker’s compensation insurance policies from the Idaho State Insurance Fund (hereinafter “the Fund”), retained those policies for at least six months and were billed annual premiums in an amount in excess of \$2,500.00 (two thousand five hundred dollars). These contracts included a provision which entitled Plaintiffs and the members of the Class to receive, as a “readjustment of the rate” upon which premiums were determined (hereinafter a “dividend”), a *pro rata* (based upon premiums paid) share of all amounts distributed, in those instances when the payment of a dividend was determined to be appropriate by the Manager and/or the Board of Directors of the Fund. In one or more of the years during the Class Period, Plaintiffs and the members of the Class, despite being otherwise qualified to receive a *pro rata* share of the total amount distributed by the Fund as a dividend, have received less than a *pro rata* share of the total amount distributed as a dividend. The determination that the Fund would not distribute dividend monies on a *pro rata basis* appears to have been made by the Fund’s appointed Manager, James M. Alcorn (hereinafter either “Alcorn” or “the Manager”) with the approval of the Board of

Directors of the Fund. Each time during the Class Period that the Fund failed to pay the Plaintiffs and the members of the Class *pro rata* shares of the total amount distributed as a dividend, the Fund breached the terms of its contracts with them and violated the law.

The named Plaintiffs for themselves and for the Class are seeking:

1. A declaratory judgment, determining that the Fund acted in direct contravention of its contract with the Plaintiffs and the members of the Class and the law of the State when it determined not to utilize the contractually applicable formula (*pro rata* basis) for allocating the dividends which were distributed and determining the amount due to the Plaintiffs and each Class member, including an award for prejudgment interest, attorneys' fees and the cost of suit, Class notice and Class administration expenses.
2. Injunctive relief, enjoining the Defendants in respect to any dividends distributed to any policyholders who acquired policies with inception dates on or before June 30, 2009, from paying out dividends to Plaintiffs and the members of the Class in a manner which is contrary to the terms of the contracts with the Plaintiffs and the members of the Class and the law.
3. A determination that the Fund breached its contract with Plaintiffs and the members of the Class and, based upon that determination, the entry of a judgment awarding damages for breach of contract in an amount equal to the dividends which should have been, but were not, paid or credited to them during each year within the Class Period, together with an award for interest upon the amount due but unpaid from the date upon which the relevant distribution occurred, attorneys' fees and the costs of suit, Class notice and Class administration expenses.



**PART I: PARTIES**

1.

The Plaintiff, CDA Dairy Queen, Inc. is an Idaho corporation which is now and for the relevant period prior to the filing of this Complaint has been conducting business in the State of Idaho. The Plaintiff, Discovery Care Centre, LLC of Salmon is an Idaho Limited Liability Company which is now and for the relevant period prior to the filing of this Complaint has been conducting business in the State of Idaho.

2.

At all times material and relevant to this action, the State of Idaho has had in force and effect a comprehensive worker's compensation statutory scheme which, as set forth in I.C. 72-203, applies to "all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section § 72-212, Idaho Code". These statutes establishing this system, and, *inter alia*, creating the Fund, are found in Title 72 of the Idaho Code.

3.

The Fund is "an independent body corporate politic" created by statute (specifically, Idaho Code § 72-901) for the purpose of insuring employers against liability for compensation under the worker's compensation and occupational injury laws of the State of Idaho. The Fund is administered without liability on the part of the State of Idaho.

4.

The Fund is the single largest issuer of worker's compensation insurance in the State of Idaho.

5.

The Fund is governed by a board of five directors (hereinafter “the Board”), all of whom are appointed by the Governor. Defendants William Deal (2000 to 2007), Wayne Meyer (2000 to 2004), Gerald Geddes (2000 to 2007), John Goedde (part of 2001 to current), Elaine Martin (2004 to 2007), Mark Snodgrass (2005 to 2008), Rodney A. Higgins (2007 to current), Terry Gestrin (2008 to current), Max Black (2009 to current) and Steve Landon (2008 to current) served, during the years noted, as members of the Board.

6.

The members of the Board appointed a Manager of the Fund who serves at their pleasure (Idaho Code § 72-901). The Defendant Alcorn is now and at all times relevant hereto was the duly appointed and acting Manager of the Defendant Fund.

**PART II: FACTUAL ALLEGATIONS**

7.

Plaintiffs and the members of the Class now, and at all times relevant hereto, have had one or more employees – not expressly exempted by Idaho Code § 72-212 – for whom Plaintiffs and the members of the Class are statutorily required at all times to secure compensation for work-related injuries.

8.

Plaintiffs and the members of the Class now, and at all times relevant hereto, have obtained worker’s compensation insurance coverage applicable to non-exempt employees by contracting with (also referred to in statute as “subscribing”) the Fund.

9.

Under the applicable Idaho law, the terms of the contract between the Plaintiffs and the Fund includes the statutes included within Chapter 9 of Title 72 of the Idaho Code.

10.

As of June 30, 2009, Idaho Code § 72-915 provided as follows:

At the end of every year, and as such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

This term of the contract between the parties requires that any dividend which the Fund elects to distribute must be distributed among all "Qualified Policyholders" (those who had entered into a contract for a policy during the period covered by any dividend being distributed and who held that policy in effect for at least six months). The term of the contract requires that total amount of the dividend be allocated into shares based upon the ratio between the amount of annual premiums billed to each Qualified Policyholder during the Dividend Period and the total annual premiums billed to all Qualified Policyholders during the same period. Neither this term of the contract nor any other term of the contract or any applicable law provides the Manager any authority whatsoever to distribute the dividend based upon any other allocation formula.

11.

In May of 2009, the Idaho Legislature attempted to repeal Idaho Code § 72-915. This enactment, Section 1 of S.L. 2009, ch.294 could not have become effective before July 1, 2009. The enactment repealing this statute purports to make the repeal retroactive to January 1, 2003,

but such attempted repeal is, pursuant to Article I, Section 16 of the Idaho Constitution and Article 1, Section 10 of the United States Constitution, unconstitutional, null, void and of no effect as to contracts of insurance in existence prior to the effective date of the repeal.

**12.**

The Fund has, in all relevant years prior to the filing of this action, distributed dividends either a few days before the end of the calendar year or early in the following year. In all cases, the amount of the dividend has been distributed without regard to class of employment or industry of the subscribers who received a share of the dividend. Each dividend is distributed relative to policies which were acquired and held during a twelve month period (the "Dividend Period") between the July 1 which falls about 30 months prior to the distribution and the June 30 which falls about 18 months prior to the distribution. Thus, for example, the dividend distribution which occurred on or about January 5, 2009, applied to policies issued in the Dividend Period which began on July 1, 2006, and ended on June 30, 2007. As this action pertains to any dividends distributed after December 24, 2004, the Dividend Periods at issue begin with policies purchased on or after July 1, 2002. As this action also pertains to any policies acquired before July 1, 2009, the Dividend Periods at issue end with policies purchased on or before June 30, 2009, (as to which dividends, if any, will be distributed in approximately January of 2011). During some or all of the Dividend Periods beginning on July 1, 2002 and including all Dividend Periods ending on or before June 30, 2009 (herein the "Class Period") the Fund has distributed (as to Dividend Periods ending on or before June 30, 2008) and may, in the future, distribute (as to Dividend Periods beginning on July 1, 2008 and ending on June 30, 2009) a dividend to subscribers.

13.

For some or all of the Dividend Periods falling within the Class Period, the Plaintiffs and the members of the Class purchased a worker's compensation insurance policy from the Fund, were billed annual premiums which were in excess of \$2,500.00, retained each such policy for at least 6 months, and, for each such Dividend Period, did not receive an amount which was equal to or greater than a *pro rata* share of the dividend distributed by the Fund. In each such instance, the Plaintiffs and the members of the Class did not receive a dividend because the Manager and/or the Board arbitrarily, capriciously, and without any lawful authority, violated the terms of the contract and the law by determining that such amounts which were distributed as dividends would not be allocated among policyholders on a *pro rata* basis.

**PART III: CLASS ACTION ALLEGATIONS**

14.

Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b) of the Idaho Rules of Civil Procedure individually and on behalf of a class of similarly situated persons and entities.

15.

The Class shall include, for each of the Dividend Periods during the Class Period as to which a dividend was or may be distributed, all Idaho employers who: a.) were subscribers to the Fund (i.e. contracted with the Fund to secure worker's compensation insurance); b.) were billed an annual premium for such insurance which was more than \$2,500.00; c.) retained the coverage for at least 6 months; and, d.) did not or may not, with respect to the Dividend Period in which the policy was acquired, receive a dividend which was at least equal to a *pro rata* share of the

total amount of dividend being distributed (a share determined based upon the ratio between the amount of annual premiums billed to each Qualified Policyholder during the Dividend Period and the total annual premiums billed to all Qualified Policyholders during the same period).

**16.**

The Class is so numerous that joinder of all members of the Class as named Plaintiffs herein is impracticable. The information available to Plaintiffs demonstrates that in excess of 8500 policies have been issued in each year during the Class Period to employers who were billed in excess of \$2,500 in annual premiums.

**17.**

The claims of the named Plaintiffs are typical of the claims of all members of the Class, and all members of the Class sustained damages arising out of the same wrongful conduct of the Defendants.

**18.**

The named Plaintiffs will fairly and adequately protect the interests of the Class. They have retained counsel who are competent and experienced in class action litigation. Their counsel have among them over 100 years of experience practicing law in State and Federal Courts in Idaho and other jurisdictions, and they have been involved in and processed to recovery numerous class action lawsuits.

**19.**

A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Joinder of all members of the Class is impractical because the members number in excess of ten thousand and they reside (or have their principal place of business) throughout the entire State of Idaho. It would also be impracticable for each member of the Class

**FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL - 9**

to bring separate actions because the individual damages of any one Class member will be relatively small when measured against the potential costs of bringing this action, making the expense and burden of this litigation unjustifiable for individual actions. In this class action, the court can determine the rights of the named Plaintiffs and all members of the Class with judicial economy. The named Plaintiffs do not anticipate any difficulty in the management of this suit as a class action.

**20.**

The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant.

**21.**

The Defendants have acted on grounds which are universally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

**22.**

There are numerous common questions of law and fact that exist as to all members of the Class and they clearly predominate over any questions affecting solely individual members of the Class. These questions include, but are not limited to, the following:

- a. Whether during the Class Period the individual Class member has been a subscriber to the Fund.
- b. Whether, during one of more of those years, the individual Class member was billed an annual premium in excess of \$2,500.00 for a policy of worker's compensation coverage.

- c. Whether the Fund's failure to pay a *pro rata* dividend to all subscribers whose annual premium for that year equaled or was greater than \$2,500.00 was, as to those subscribers who did not receive a *pro rata* dividend, a breach of the contract between the Fund and those subscribers and a violation of law.
- d. Whether the attempted retroactive repeal of I.C. § 72-915 in 2009 was unconstitutional.
- e. How the dividends to be paid to each such subscriber shall be calculated for each such year.
- f. Whether one or more of the Defendants must pay the Plaintiffs and members of the class pre-judgment interest on such sums as the Fund should have paid to them for each year during the Class Period.
- g. If the Plaintiffs and the members of the class are entitled to recover interest, then it will be necessary to determine the applicable rate of pre-judgment interest and the date or dates from which interest will be assessed.
- h. Whether the Plaintiffs and the members of the class are entitled to an order enjoining the Defendants from, in future years, failing to distribute any declared dividends among all policy holders on a *pro rata* basis.
- i. Whether the Plaintiffs and the members of the Class are entitled to recovery of attorney's fees and costs (including litigation costs, Class notice costs and Class administration costs) from the Defendants.



**COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS**

**23.**

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment pursuant to Idaho Code title 10, chapter 12.

**24.**

There is an actual controversy within the jurisdiction of this Court and declaratory relief will provide an effective and efficacious means for terminating uncertainty and resolving controversy by adjudicating the rights and interests of the parties with respect to the following acts and events:

- a.) One or more of the Defendants have, for each annual policy issued during the Class Period, breached the contract between the Fund and its subscribers and violated the law by using arbitrary and/or improper benchmarks or calculations to determine which of its subscribers were entitled to receive a dividend and, as a consequence, have denied appropriate dividends to some subscribers who were otherwise contractually and lawfully entitled to receive a *pro rata* share of the total amount distributed as a dividend once the Manager or the Fund determined that it was appropriate to pay dividends.
- b.) One or more of the Defendants will, absent an order from this Court, continue to breach the contract and violate the law by using arbitrary, and/or improper benchmarks or calculations to determine which of the Fund's subscribers are entitled to receive a dividend
- c.) For each of the years in the Class Period, the Plaintiffs and members of the class have not received appropriate dividends when dividends have been paid out by the Fund

and they will, absent an order from this Court, continue to be denied the appropriate dividends which are due to them.

**25.**

Pursuant to Idaho Code §§10-1201 and 10-1205, this Court has the authority to declare that the acts and actions of one or more of the Defendants, as set forth in this Complaint, are not now and, at no time during the Class Period, have been in conformity with the terms of the contract and the provisions of law.

**26.**

Pursuant to Idaho Code §§10-1201 and 10-1205, this Court has the authority to declare that, by reason of the conduct alleged herein one or more of the Defendants should also pay pre-judgment interest on all amounts found due to any Plaintiff or Class member as unpaid dividends from the date(s) that such dividend(s) should have been paid, to the date of judgment herein. The Court has the authority to apply the statutory rates of pre-judgment interest.

**27.**

This Court has the authority to make all such other, further and additional rulings as are needed to fully and completely resolve any and all issues that are raised by this Complaint.

**28.**

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Class are entitled to recover their attorneys' fees and costs incurred in the prosecution of this action and in notifying and administering the Class from one or more of the Defendants.

**COUNT II: DECLARATORY RELIEF — INJUNCTION**

**29.**

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment providing for injunctive relief, pursuant to Idaho Code Title 10, chapter 12.

**30.**

This Court has the authority to declare that, under the circumstances set forth above, the Defendants have acted in contrary to the provisions of the contract between the Fund and its subscribers and in violation of Idaho law. This Court may, therefore, order that the Defendants should be permanently enjoined for the duration of the Class Period from conditioning any future distribution of dividends to any of its subscribers on less than a *pro rata* basis.

**31.**

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Class are entitled to recover from Defendants their attorneys' fees and costs incurred in the prosecution of this action and in notifying and administering the Class from one or more of the Defendants.

**COUNT III: DAMAGES FOR BREACH OF CONTRACT**

**32.**

Plaintiffs reallege the allegations contained in Paragraphs 1 through and including 31 of this Complaint and incorporate the same by reference herein.

**33.**

For each policy issued during the Class Period for which each Plaintiff and each and

every member of the Class was entitled to but did not receive an appropriate dividend, such Plaintiffs and Class members have been damaged by the acts and actions of the Defendants as set forth herein which breach the terms of the contract. The amount of the damages sustained by each Plaintiff and each and every member of the Class is easily ascertainable. It is equal to the amount of the dividend which should have been, but was not, paid to Plaintiffs and each such member of the Class, reduced by the amount of dividend actually paid. These damages should be paid to Plaintiffs and each member of the Class by one or more of the Defendants.

**34.**

For each Dividend Period during the Class Period, Plaintiffs and the members of the Class are entitled to pre-judgment interest on the amounts which should have been paid but were not paid, commencing on the date that dividend checks were issued to the Fund's subscribers and continuing to the date of judgment. Pre-judgment interest should be paid to Plaintiffs and each member of the Class by one or more of the Defendants.

**35.**

Plaintiffs have been required to engage the services of the attorneys named in this Complaint in order to represent them and the members of the class in connection with this action. Plaintiffs are entitled to recover the attorneys' fees and costs which they incur in the prosecution of this action and for notifying and administering the Class from the Defendants.

**WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:**

1. That the Court certify the class as herein above requested and conduct proceedings to establish an appropriate class notice and method of sending notice to the class;
2. That the repeal of I.C. § 72-915 by the 2009 legislature be deemed to be unconstitutional, void and of no effect as to all policies issued prior to July 1, 2009.


3. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 and 10-1205, that the Defendants do not now have, and at all times material and relevant to this action, did not have any contractual or lawful authority to distribute any amounts as dividends using any formula other than one which results in the allocation of the total amount of the dividend into shares based upon the ratio between the amount of annual premiums billed to each Qualified Policyholder during the Dividend Period and the total annual premiums billed to all Qualified Policyholders during the same period.
4. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 and 10-1205, that, for each year during the Class Period, it was a breach of contract and unlawful for one or more of the Defendants to cause the Fund to fail or refuse to pay Plaintiffs and the members of the Class a *pro rata* share of the total amount of dividend being distributed (a share determined based upon the ratio between the amount of annual premiums billed to each Qualified Policyholder during the Dividend Period and the total annual premiums billed to all Qualified Policyholders during the same period).
5. That the Court find and rule that the Plaintiffs and the members of the Class were damaged by acts and actions of one or more of the Defendants, which were contrary to the provisions of the Fund's contracts with its subscribers, and that the amount of the damages sustained by the Plaintiffs and each member of the Class as a result of a these breaches of contract is the total dividends which such Plaintiff or such Class member should have received from the Defendants upon each policy acquired during each Dividend Period falling within the Class Period less the amounts actually received, together with pre-judgment interest upon the difference between what should have been paid and what was paid.

6. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 and 10-1205, that one or more of the Defendants must pay to the Plaintiffs and the members of the Class the total dividends which such Plaintiffs or such Class members should have received from the Defendants upon each policy acquired during each Dividend Period falling within the Class Period, less the amounts actually received, together with pre-judgment interest on the difference between what should have been paid and what was paid.
7. That the Court ascertain the correct rate of pre-judgment interest to be applied and make all determinations necessary to compute the dividends and pre-judgment interest that are due to the Plaintiffs and members of the Class in connection with any and all dividends which were wrongfully withheld from or not fully paid to them at any time after the commencement of the Class Period.
8. That the Court enter a temporary injunction, enjoining the Defendants from allocating and paying to any of its Qualified Policyholders less than *pro rata* share of the total amount of dividend being distributed for any Dividend Period ending prior to July 1, 2009, (a share determined based upon the ratio between the amount of annual premiums billed to each Qualified Policyholder during the Dividend Period and the total annual premiums billed to all Qualified Policyholders during the same period).
9. That the Court make all such other, further and additional rulings as are needed in order to fully and completely resolve any and all issues that are raised by this Complaint.
10. That the Court order one or more of the Defendants to pay the attorneys' fees and costs incurred by the Plaintiffs and members of the Class in connection with this action including the costs associated with notice an class administration.

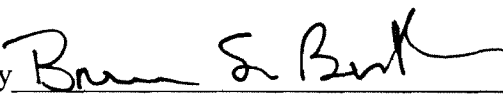
12. For such other and further relief as is just and equitable in the premises.

DATED This 9<sup>th</sup> day of June, 2010.

LOJEK LAW OFFICES, CHTD.

By   
Donald W. Lojek

GORDON LAW OFFICES

By   
Bruce S. Bistline

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand, pursuant to Rule 38 I.R.C.P. a trial by jury on any and all issues properly triable by jury in this action. Plaintiffs will not stipulate to a jury of less than 12 persons.

  
Donald W. Lojek  
Attorney for Plaintiffs

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Keely E. Duke  
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W:\33-461.9\PLEADINGS\Answer.doc  
Attorneys for Defendants

**F I L E D**  
A.M. 4:30 P.M.  
JUL 01 2010 ✓  
CANYON COUNTY CLERK  
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and  
DISCOVERY CARE CENTRE, LLC OF  
SALMON,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE  
FUND, JAMES M. ALCORN, in his  
official capacity as its Manager, and  
WILLIAM DEAL, WAYNE MEYER,  
GERALD GEDDES, JOHN GOEDDE,  
ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN and MAX BLACK and  
STEVE LANDON, in their capacity as  
members of the Board of Directors of the  
State Insurance Fund,

Defendants.

Case No. CV 09-13607-C

**ANSWER TO PLAINTIFFS' FIRST  
AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**COME NOW** defendants The Idaho State Insurance Fund, James M. Alcorn in his  
official capacity as its Manager, and William Deal, Gerald Geddes, John Goedde, Elaine Martin,  
Mark Snodgrass, Rodney A. Higgins, Terry Gestrin, Max Black, and Steve Landon in their

ANSWER TO PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY  
TRIAL - 1

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capacity as members of the Board of Directors of the State Insurance Fund (collectively, the “SIF defendants”), by and through their counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiffs’ First Amended Class Action Complaint and Demand for Jury Trial (“Amended Complaint”), admit, deny and allege as follows:

**FIRST DEFENSE**

Plaintiffs’ Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

The SIF defendants deny each and every paragraph and allegation of plaintiffs’ Amended Complaint unless specifically and expressly admitted in this document.

**INTRODUCTION**

With respect to the allegations contained in the “Introduction” to plaintiffs’ Amended Complaint, such allegations in many instances do not require a response because they are preliminary statements as to the filing of the action. To the extent a response is required with respect to any statement or allegation contained in the introductory paragraph, the SIF defendants deny any and all allegations, including plaintiffs’ characterizations, contained within the introduction of plaintiffs’ Amended Complaint as an outright denial and/or due to lack of sufficient information or knowledge.

**PART I: PARTIES**

1. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of plaintiffs’ Amended Complaint and, therefore, deny the same.

2. The SIF defendants admit the allegations contained in paragraph 2 of plaintiffs’ Amended Complaint.

3. The SIF defendants admit the allegations contained in paragraph 3 of plaintiffs' Amended Complaint.

4. The SIF defendants admit the allegations contained in paragraph 4 of plaintiffs' Amended Complaint.

5. With respect to the allegations contained in paragraph 5 of plaintiffs' Amended Complaint, the SIF defendants admit that the State Insurance Fund ("SIF") is governed by a board of five directors, all of whom are appointed by the Governor. The SIF defendants further admit that William Deal, Wayne Meyer, Gerald Geddes, John Goedde, Elaine Martin, Mark Snodgrass, Rodney A. Higgins, Terry Gestrin, Max Black, and Steve Landon all served (or are serving) on the board of directors for the SIF. The SIF defendants further admit that John Goedde, Rodney Higgins, Terry Gestrin, Max Black, and Steve Landon presently serve on the board of directors for the SIF. However, the SIF defendants deny the dates plaintiffs identified as the dates of service by those individuals on the board of directors for the SIF.

6. The SIF defendants admit the allegations contained in paragraph 6 of plaintiffs' Amended Complaint.

## **PART II: FACTUAL ALLEGATIONS**

7. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 7 of plaintiffs' Amended Complaint and, therefore, deny the same.

8. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 8 of plaintiffs' Amended Complaint and, therefore, deny the same.

9. The SIF defendants deny the allegations, including plaintiffs' characterizations, contained in paragraph 9 of plaintiffs' Amended Complaint.

10. The SIF defendants deny the allegations contained in paragraph 10 of plaintiffs' Amended Complaint, as Idaho Code §72-915 had been repealed by June 30, 2009, and as the language of Idaho Code §72-915 prior to repeal speaks for itself. Further, the SIF defendants deny all allegations, including plaintiffs' characterizations, contained within the last paragraph of paragraph 10 of plaintiffs' Amended Complaint.

11. With respect to the allegations contained in paragraph 11 of plaintiffs' Amended Complaint, the SIF defendants admit only that the repeal of Idaho Code §72-915 was signed by the Governor on May 6, 2009, with a stated retroactive effective date of January 1, 2003. The SIF defendants deny all other allegations, including plaintiffs' characterizations, contained in paragraph 11 of plaintiffs' Amended Complaint.

12. With respect to the first and second sentences of paragraph 12 of plaintiffs' Amended Complaint, the SIF defendants deny those allegations given that plaintiffs' use of, and reliance on, the terms "all relevant years" and "a few days" is vague and ambiguous. The SIF defendants deny any and all allegations contained in the third, fourth, fifth, and sixth sentences of paragraph 12, including plaintiffs' characterizations.

13. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in the first sentence of paragraph 13 of plaintiffs' Amended Complaint and, therefore, deny the same. The SIF defendants deny any and all allegations contained in the second sentence of paragraph 13, including plaintiffs' characterizations.

### **PART III: CLASS ACTION ALLEGATIONS**

14. Paragraph 14 does not contain an allegation for which a response is required. To the extent a response is required, the SIF defendants deny paragraph 14 of plaintiffs' Amended Complaint.

15. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 15 of plaintiffs' Amended Complaint and, therefore, denies the same.

16. With respect to the first sentence of paragraph 16 of plaintiffs' Amended Complaint, the SIF defendants deny that sentence. With respect to the remaining three sentences contained within paragraph 16, the SIF defendants deny those allegations given that plaintiffs' use of the term "issued" is vague and ambiguous.

17. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 17 of plaintiffs' Amended Complaint.

18. The SIF defendants deny the first sentence of paragraph 18 of plaintiffs' Amended Complaint. With respect to the remaining two sentences of that paragraph, the SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in those two sentences and, therefore, denies the same.

19. With respect to the first sentence in paragraph 19 of plaintiffs' Amended Complaint, such sentence does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny the first sentence of paragraph 19 of plaintiffs' Amended Complaint. With respect to the remaining allegations contained within paragraph 19 of plaintiffs' Amended Complaint, the SIF defendants deny those allegations either as being untrue and/or due to a lack of sufficient knowledge or information.

20. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 20 of plaintiffs' Amended Complaint and, therefore, denies the same.

21. Paragraph 21 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF

defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 21 of plaintiffs' Amended Complaint.

22. Paragraph 22 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22 of plaintiffs' Amended Complaint.

23. Paragraph 22(a) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(a) of plaintiffs' Amended Complaint.

24. Paragraph 22(b) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(b) of plaintiffs' Amended Complaint.

25. Paragraph 22(c) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(c) of plaintiffs' Amended Complaint.

26. Paragraph 22(d) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(d) of plaintiffs' Amended Complaint.

27. Paragraph 22(e) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF

defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(e) of plaintiffs' Amended Complaint.

28. Paragraph 22(f) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(f) of plaintiffs' Amended Complaint.

29. Paragraph 22(g) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(g) of plaintiffs' Amended Complaint.

30. Paragraph 22(h) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(h) of plaintiffs' Amended Complaint.

31. Paragraph 22(i) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(i) of plaintiffs' Amended Complaint.

**COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS**

32. Paragraph 23 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

33. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24 of plaintiffs' Amended Complaint.

34. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(a) of plaintiffs' Amended Complaint.

35. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(b) of plaintiffs' Amended Complaint.

36. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(c) of plaintiffs' Amended Complaint.

37. Paragraph 25 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25 of plaintiffs' Amended Complaint.

38. Paragraph 26 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 26 of plaintiffs' Amended Complaint.

39. Paragraph 27 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 27 of plaintiffs' Amended Complaint.

40. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 28 of plaintiffs' Amended Complaint.

**COUNT II: DECLARATORY RELIEF - INJUNCTION**

41. Paragraph 29 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

42. Paragraph 30 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 30 of plaintiffs' Amended Complaint.

43. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 31 of plaintiffs' Amended Complaint.

**COUNT III: DAMAGES**

44. Paragraph 32 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

45. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 33 of plaintiffs' Amended Complaint.

46. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 34 of plaintiffs' Amended Complaint.

47. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 35 of plaintiffs' Amended Complaint.

48. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within plaintiffs' prayer for relief.



**THIRD DEFENSE**

Plaintiffs' claims are barred under the doctrine of laches, unclean hands, waiver and/or estoppel under the circumstances asserted in the Amended Complaint.

**FOURTH DEFENSE**

Any damages that plaintiffs allegedly suffered resulted from the acts or omissions of others for whom defendants are not liable.

**FIFTH DEFENSE**

Plaintiffs have failed to mitigate their damages.

**SIXTH DEFENSE**

Plaintiffs lack standing to assert the causes of action alleged in plaintiffs' Amended Complaint.

**SEVENTH DEFENSE**

Plaintiffs have not complied with all conditions precedent to bringing this action.

**EIGHTH DEFENSE**

Neither the allegations in the Amended Complaint, nor the facts related to this subject matter of this action, call for class action certification. The SIF defendants reserve the right to contest any motion or request for certification plaintiffs may file.

**NINTH DEFENSE**

Plaintiffs' damages, if any, were not proximately caused by the conduct of defendants.

**TENTH DEFENSE**

Some or all of plaintiffs' claims are barred by the applicable statute of limitations, Idaho Code §§ 5-215, 5-217, 5-218, 5-224, and/or 5-237.

**ELEVENTH DEFENSE**

Plaintiffs have failed to comply with the requirements of the Idaho Tort Claims Act, Idaho Code § 6-901, et seq.

**TWELFTH DEFENSE**

At all times material hereto, the SIF, Mr. Alcorn, and the Directors of the Board of the SIF acted in accordance with Idaho Code § 72-901, et seq.

**THIRTEENTH DEFENSE**

The repeal of Idaho Code §72-915 was signed by the Governor on May 6, 2009, with a retroactive effective date of January 1, 2003, and, as such, no action based upon Idaho Code §72-915 can be maintained.

**FOURTEENTH DEFENSE**

Plaintiffs have failed to join an indispensable party; to wit, plaintiffs have failed to serve the Attorney General's Office, as required by Idaho Code §10-1211.

**FIFTEENTH DEFENSE**

Plaintiffs cannot any claims arising out of, or otherwise sounding in, contract, as the SIF insurance policy does not provide for the payment of a dividend to policyholders.

**RESERVATION OF DEFENSES**

The SIF defendants, by virtue of pleading a defense above, do not admit that said defense is an affirmative defense within the meaning of applicable law, and the SIF defendants do not thereby assume a burden of proof or production not otherwise imposed upon it as a matter of law. In addition, in asserting any of the above defenses, the SIF defendants do not admit any fault, responsibility, liability or damage but, to the contrary, expressly denies the same. Discovery has yet to commence, the results of which may disclose the existence of facts

supporting further and additional defenses. The SIF defendants, therefore, reserve the right to seek leave of this Court to amend its Answer as it deems appropriate.

**REQUEST FOR ATTORNEY FEES**

As a result of the filing of this action by the plaintiffs, the SIF defendants have been required to obtain the services of Hall, Farley, Oberrecht & Blanton, P.A., Boise, Idaho to defend this action, and has and will continue to incur reasonable attorney fees based upon the time expended in such defense. The SIF defendants allege and hereby makes a claim against plaintiffs for attorney fees and costs incurred pursuant to the provisions Idaho Code §§ 12-120, 12-121, 12-123, 41-1839, Rule 54 of the Idaho Rules of Civil Procedure, and any other appropriate provision of law.

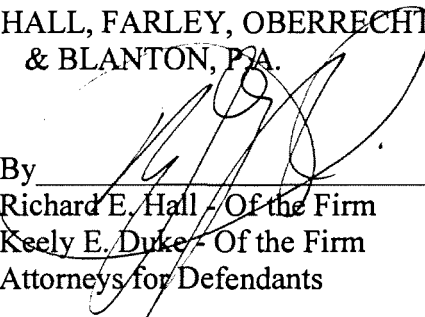
**PRAYER FOR RELIEF**

Wherefore, the SIF defendants pray for judgment as follows:

1. That plaintiffs take nothing against the SIF defendants by way of their Amended Complaint and that the Amended Complaint be dismissed with prejudice;
2. That the SIF defendants be awarded their costs and reasonable attorney fees incurred in the defense of this action; and
3. For such other and further relief as the Court may deem just and proper.

DATED this 1<sup>st</sup> day of July, 2010.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By   
Richard E. Hall - Of the Firm  
Keely E. Duke - Of the Firm  
Attorneys for Defendants

#6432  


CERTIFICATE OF SERVICE

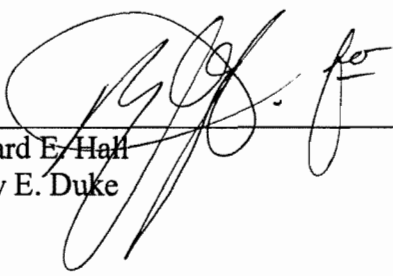
I HEREBY CERTIFY that on the 1<sup>st</sup> day of July, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Donald W. Lojek  
Lojek Law Offices, Chtd.  
623 West Hays Street  
Boise, ID 83702  
Fax No.: (208) 345-0050  
*Attorneys for Plaintiffs*

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy  
 Email

Philip Gordon  
Bruce S. Bistline  
Gordon Law Offices  
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*Attorneys for Plaintiffs*

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Attorneys for Defendants

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A.M. *7:10* P.M.  
JUL 21 2010  
CANYON COUNTY CLERK  
C DOCKINS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and  
DISCOVERY CARE CENTRE, LLC OF  
SALMON,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE  
FUND, JAMES M. ALCORN, in his  
official capacity as its Manager, and  
WILLIAM DEAL, WAYNE MEYER,  
GERALD GEDDES, JOHN GOEDDE,  
ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN and MAX BLACK and  
STEVE LANDON, in their capacity as  
members of the Board of Directors of the  
State Insurance Fund,

Defendants.

Case No. CV 09-13607-C

**FIRST AMENDED ANSWER TO  
PLAINTIFFS' FIRST AMENDED  
CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

**COME NOW** defendants The Idaho State Insurance Fund, James M. Alcorn in his  
official capacity as its Manager, and William Deal, Gerald Geddes, John Goedde, Elaine Martin,  
Mark Snodgrass, Rodney A. Higgins, Terry Gestrin, Max Black, and Steve Landon in their

capacity as members of the Board of Directors of the State Insurance Fund (collectively, the “SIF defendants”), by and through their counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiffs’ First Amended Class Action Complaint and Demand for Jury Trial (“Amended Complaint”), admit, deny and allege as follows:

**FIRST DEFENSE**

Plaintiffs’ Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

The SIF defendants deny each and every paragraph and allegation of plaintiffs’ Amended Complaint unless specifically and expressly admitted in this document.

**INTRODUCTION**

With respect to the allegations contained in the “Introduction” to plaintiffs’ Amended Complaint, such allegations in many instances do not require a response because they are preliminary statements as to the filing of the action. To the extent a response is required with respect to any statement or allegation contained in the introductory paragraph, the SIF defendants deny any and all allegations, including plaintiffs’ characterizations, contained within the introduction of plaintiffs’ Amended Complaint as an outright denial and/or due to lack of sufficient information or knowledge.

**PART I: PARTIES**

1. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of plaintiffs’ Amended Complaint and, therefore, deny the same.

2. The SIF defendants admit the allegations contained in paragraph 2 of plaintiffs’ Amended Complaint.

3. The SIF defendants admit the allegations contained in paragraph 3 of plaintiffs' Amended Complaint.

4. The SIF defendants admit the allegations contained in paragraph 4 of plaintiffs' Amended Complaint.

5. With respect to the allegations contained in paragraph 5 of plaintiffs' Amended Complaint, the SIF defendants admit that the State Insurance Fund ("SIF") is governed by a board of five directors, all of whom are appointed by the Governor. The SIF defendants further admit that William Deal, Wayne Meyer, Gerald Geddes, John Goedde, Elaine Martin, Mark Snodgrass, Rodney A. Higgins, Terry Gestrin, Max Black, and Steve Landon all served (or are serving) on the board of directors for the SIF. The SIF defendants further admit that John Goedde, Rodney Higgins, Terry Gestrin, Max Black, and Steve Landon presently serve on the board of directors for the SIF. However, the SIF defendants deny the dates plaintiffs identified as the dates of service by those individuals on the board of directors for the SIF.

6. The SIF defendants admit the allegations contained in paragraph 6 of plaintiffs' Amended Complaint.

## **PART II: FACTUAL ALLEGATIONS**

7. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 7 of plaintiffs' Amended Complaint and, therefore, deny the same.

8. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 8 of plaintiffs' Amended Complaint and, therefore, deny the same.

9. The SIF defendants deny the allegations, including plaintiffs' characterizations, contained in paragraph 9 of plaintiffs' Amended Complaint.

10. The SIF defendants deny the allegations contained in paragraph 10 of plaintiffs' Amended Complaint, as Idaho Code §72-915 had been repealed by June 30, 2009, and as the language of Idaho Code §72-915 prior to repeal speaks for itself. Further, the SIF defendants deny all allegations, including plaintiffs' characterizations, contained within the last paragraph of paragraph 10 of plaintiffs' Amended Complaint.

11. With respect to the allegations contained in paragraph 11 of plaintiffs' Amended Complaint, the SIF defendants admit only that the repeal of Idaho Code §72-915 was signed by the Governor on May 6, 2009, with a stated retroactive effective date of January 1, 2003. The SIF defendants deny all other allegations, including plaintiffs' characterizations, contained in paragraph 11 of plaintiffs' Amended Complaint.

12. With respect to the first and second sentences of paragraph 12 of plaintiffs' Amended Complaint, the SIF defendants deny those allegations given that plaintiffs' use of, and reliance on, the terms "all relevant years" and "a few days" is vague and ambiguous. The SIF defendants deny any and all allegations contained in the third, fourth, fifth, and sixth sentences of paragraph 12, including plaintiffs' characterizations.

13. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in the first sentence of paragraph 13 of plaintiffs' Amended Complaint and, therefore, deny the same. The SIF defendants deny any and all allegations contained in the second sentence of paragraph 13, including plaintiffs' characterizations.

### **PART III: CLASS ACTION ALLEGATIONS**

14. Paragraph 14 does not contain an allegation for which a response is required. To the extent a response is required, the SIF defendants deny paragraph 14 of plaintiffs' Amended Complaint.



15. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 15 of plaintiffs' Amended Complaint and, therefore, denies the same.

16. With respect to the first sentence of paragraph 16 of plaintiffs' Amended Complaint, the SIF defendants deny that sentence. With respect to the remaining three sentences contained within paragraph 16, the SIF defendants deny those allegations given that plaintiffs' use of the term "issued" is vague and ambiguous.

17. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 17 of plaintiffs' Amended Complaint.

18. The SIF defendants deny the first sentence of paragraph 18 of plaintiffs' Amended Complaint. With respect to the remaining two sentences of that paragraph, the SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in those two sentences and, therefore, denies the same.

19. With respect to the first sentence in paragraph 19 of plaintiffs' Amended Complaint, such sentence does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny the first sentence of paragraph 19 of plaintiffs' Amended Complaint. With respect to the remaining allegations contained within paragraph 19 of plaintiffs' Amended Complaint, the SIF defendants deny those allegations either as being untrue and/or due to a lack of sufficient knowledge or information.

20. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 20 of plaintiffs' Amended Complaint and, therefore, denies the same.

21. Paragraph 21 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF

defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 21 of plaintiffs' Amended Complaint.

22. Paragraph 22 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22 of plaintiffs' Amended Complaint.

23. Paragraph 22(a) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(a) of plaintiffs' Amended Complaint.

24. Paragraph 22(b) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(b) of plaintiffs' Amended Complaint.

25. Paragraph 22(c) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(c) of plaintiffs' Amended Complaint.

26. Paragraph 22(d) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(d) of plaintiffs' Amended Complaint.

27. Paragraph 22(e) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF

defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(e) of plaintiffs' Amended Complaint.

28. Paragraph 22(f) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(f) of plaintiffs' Amended Complaint.

29. Paragraph 22(g) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(g) of plaintiffs' Amended Complaint.

30. Paragraph 22(h) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(h) of plaintiffs' Amended Complaint.

31. Paragraph 22(i) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22(i) of plaintiffs' Amended Complaint.

#### **COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS**

32. Paragraph 23 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

33. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24 of plaintiffs' Amended Complaint.

34. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(a) of plaintiffs' Amended Complaint.

35. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(b) of plaintiffs' Amended Complaint.

36. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 24(c) of plaintiffs' Amended Complaint.

37. Paragraph 25 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25 of plaintiffs' Amended Complaint.

38. Paragraph 26 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 26 of plaintiffs' Amended Complaint.

39. Paragraph 27 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 27 of plaintiffs' Amended Complaint.

40. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 28 of plaintiffs' Amended Complaint.

## **COUNT II: DECLARATORY RELIEF - INJUNCTION**

41. Paragraph 29 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

42. Paragraph 30 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 30 of plaintiffs' Amended Complaint.

43. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 31 of plaintiffs' Amended Complaint.

## **COUNT III: DAMAGES**

44. Paragraph 32 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

45. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 33 of plaintiffs' Amended Complaint.

46. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 34 of plaintiffs' Amended Complaint.

47. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 35 of plaintiffs' Amended Complaint.

48. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within plaintiffs' prayer for relief.

**THIRD DEFENSE**

Plaintiffs' claims are barred under the doctrine of laches, unclean hands, waiver and/or estoppel under the circumstances asserted in the Amended Complaint.

**FOURTH DEFENSE**

Any damages that plaintiffs allegedly suffered resulted from the acts or omissions of others for whom defendants are not liable.

**FIFTH DEFENSE**

Plaintiffs have failed to mitigate their damages.

**SIXTH DEFENSE**

Plaintiffs lack standing to assert the causes of action alleged in plaintiffs' Amended Complaint.

**SEVENTH DEFENSE**

Plaintiffs have not complied with all conditions precedent to bringing this action.

**EIGHTH DEFENSE**

Neither the allegations in the Amended Complaint, nor the facts related to this subject matter of this action, call for class action certification. The SIF defendants reserve the right to contest any motion or request for certification plaintiffs may file.

**NINTH DEFENSE**

Plaintiffs' damages, if any, were not proximately caused by the conduct of defendants.

**TENTH DEFENSE**

Some or all of plaintiffs' claims are barred by the applicable statute of limitations, Idaho Code §§ 5-215, 5-217, 5-218, 5-224, and/or 5-237.

**ELEVENTH DEFENSE**

Plaintiffs have failed to comply with the requirements of the Idaho Tort Claims Act, Idaho Code § 6-901, et seq.

**TWELFTH DEFENSE**

At all times material hereto, the SIF, Mr. Alcorn, and the Directors of the Board of the SIF acted in accordance with Idaho Code § 72-901, et seq.

**THIRTEENTH DEFENSE**

The repeal of Idaho Code §72-915 was signed by the Governor on May 6, 2009, with a retroactive effective date of January 1, 2003, and, as such, no action based upon Idaho Code §72-915 can be maintained.

**FOURTEENTH DEFENSE**

Plaintiffs have failed to join an indispensable party; to wit, plaintiffs have failed to serve the Attorney General's Office, as required by Idaho Code §10-1211.

**FIFTEENTH DEFENSE**

Plaintiffs cannot any claims arising out of, or otherwise sounding in, contract, as the SIF insurance policy does not provide for the payment of a dividend to policyholders.

**SIXTEENTH DEFENSE**

SIF made dividend payments to certain of plaintiffs which, in some dividend periods, was in excess of a pro rata amount, which overpayment should serve as a set-off to liability, if any, and/or should allow SIF recoupment of any such overpayments.

**RESERVATION OF DEFENSES**

The SIF defendants, by virtue of pleading a defense above, do not admit that said defense is an affirmative defense within the meaning of applicable law, and the SIF defendants do not

thereby assume a burden of proof or production not otherwise imposed upon them as a matter of law. In addition, in asserting any of the above defenses, the SIF defendants do not admit any fault, responsibility, liability or damage but, to the contrary, expressly deny the same. Discovery has yet to commence, the results of which may disclose the existence of facts supporting further and additional defenses. The SIF defendants, therefore, reserve the right to seek leave of this Court to amend their Answer as they deem appropriate.

### **REQUEST FOR ATTORNEY FEES**

As a result of the filing of this action by the plaintiffs, the SIF defendants have been required to obtain the services of Hall, Farley, Oberrecht & Blanton, P.A., Boise, Idaho to defend this action, and have and will continue to incur reasonable attorney fees based upon the time expended in such defense. The SIF defendants allege and hereby make a claim against plaintiffs for attorney fees and costs incurred pursuant to the provisions Idaho Code §§ 12-120, 12-121, 12-123, 41-1839, Rule 54 of the Idaho Rules of Civil Procedure, and any other appropriate provision of law.

### **PRAYER FOR RELIEF**

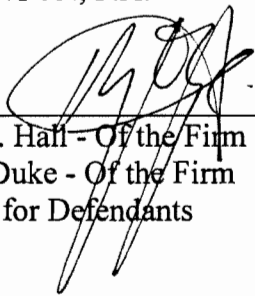

Wherefore, the SIF defendants pray for judgment as follows:

1. That plaintiffs take nothing against the SIF defendants by way of their Amended Complaint and that the Amended Complaint be dismissed with prejudice;
2. That the SIF defendants be awarded their costs and reasonable attorney fees incurred in the defense of this action; and
3. For such other and further relief as the Court may deem just and proper.



DATED this 21<sup>st</sup> day of July, 2010.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By  #6432  
Richard E. Hall - Of the Firm  
Keely E. Duke - Of the Firm  
Attorneys for Defendants 

CERTIFICATE OF SERVICE

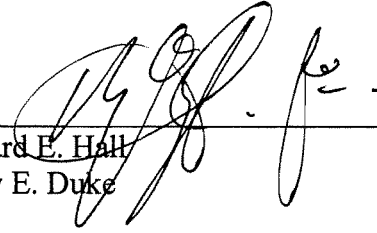
I HEREBY CERTIFY that on the 21<sup>st</sup> day of July, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Donald W. Lojek  
Lojek Law Offices, Chtd.  
623 West Hays Street  
Boise, ID 83702  
Fax No.: (208) 345-0050  
*Attorneys for Plaintiffs*

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy  
 Email

Philip Gordon  
Bruce S. Bistline  
Gordon Law Offices  
623 West Hays Street  
Boise, ID 83702  
Fax No.: (208) 345-0050  
*Attorneys for Plaintiffs*

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy  
 Email

  
\_\_\_\_\_  
Richard E. Hall  
Keely E. Duke

Donald W. Lojek ISBN 1395  
LOJEK LAW OFFICES, CHTD  
623 West Hays Street  
Boise, ID 83701  
Telephone: 208-343-7733  
Facsimile: 208-345-0050

Philip Gordon ISBN 1996  
Bruce S. Bistline ISBN 1988  
GORDON LAW OFFICES  
623 West Hays Street  
Boise, ID 83702  
Telephone: 208/345-7100  
Facsimile: 208/345-0050

Attorneys for Plaintiffs and the Class

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and DISCOVERY  
CARE CENTRE LLC OF SALMON,  
Plaintiffs,

vs.

THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, in his official capacity as  
its Manager, and WILLIAM DEAL, WAYNE  
MEYER, GERALD GEDDES, JOHN  
GOEDDE, ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN AND MAX BLACK AND  
STEVE LANDON in their capacity as  
member's of the Board of Directors of the State  
Insurance Fund,  
Defendants.

CASE NO. CV 09-13607-C

MOTION FOR PARTIAL SUMMARY  
JUDGMENT

**F I L E D**  
1140 A.M. P.M.

SEP 23 2010

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

COME NOW THE PLAINTIFFS and the members of the class and, pursuant to Rules 56 (a), (c) and (d) of the Idaho Rules of Civil Procedure, hereby move this Court for its Order, finding and ordering that the repeal, by the 2009 Idaho Legislature, of Idaho Code § 72-915, is unconstitutional, insofar as it is made retroactive to January 1, 2003.

The grounds for this Motion are as follows:

1. Article 1, Section 16 of the Constitution of the State of Idaho, which reads as follows:

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

2. The opinion of the Idaho Supreme Court in *Farber v. Idaho State Insurance Fund* 147 307, 208 P. 3d 289 (2009).

3. Idaho Code Section 10-1202, which allows the Court to enter a Declaratory Judgment at the request of any person whose rights are affected by a statute.

Plaintiffs contention is that *Farber* established that employers who purchased policies of insurance from the Fund up to and including six months prior to the effective day of the repeal of Idaho Code § 72-915 had a right to receive and the Fund had an obligation to pay a *pro rata* share of any dividend, based only on the size of each policyholder's premium. Making the law retroactive to January 1, 2003 would eliminate the Fund's duty to comply with Idaho Code § 72-915 as interpreted in *Farber*. Retroactive application of the statute would therefore clearly impair the contractual obligation of the Defendant to pay the Plaintiffs and the members of the class their portion of every dividend paid on or after January 1<sup>st</sup>, 2003.

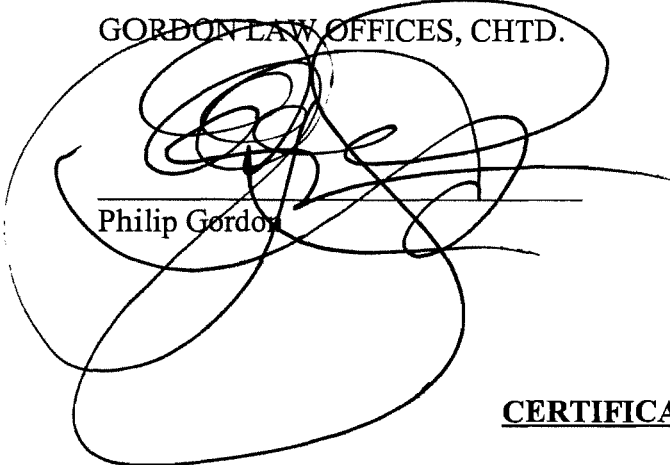
WHEREFORE, Plaintiffs and the members of the class grant them partial summary judgment, and find and declare that the repeal of Idaho Code § 72-915, if applied retroactively, is unconstitutional, in that it violates Article 1, Section 16 of the Constitution of the State of Idaho.

This Motion is supported by the Affidavit of Philip Gordon, one of the attorneys for the Plaintiffs and the members of the class, and by an accompanying Memorandum of Law.

ORAL ARGUMENT IS REQUESTED

Respectfully submitted this 22<sup>nd</sup> day of September, 2010.

GORDON LAW OFFICES, CHTD.

  
Philip Gordon

  
Donald W. Lojek

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of September, 2010, a true and correct copy of the foregoing instrument was served on the following by the method indicated below, and addressed as follows:

- Hand Delivery
- U.S. Mail, postage paid
- Overnight Express Mail
- Facsimile Copy:  
395-8585

Richard E. Hall  
Keely Duke  
Hall Farley Oberrecht & Blanton  
702 W. Idaho St. Ste. 700  
PO Box 1271  
Boise, Idaho 83701

  
Philip Gordon

Donald W. Lojek ISBN 1395  
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Boise, ID 83702  
Telephone: 208/345-7100  
Facsimile: 208/345-0050

*Attorneys for Plaintiffs and the Class*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and DISCOVERY  
CARE CENTRE LLC OF SALMON,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, in his official capacity as  
its Manager, and WILLIAM DEAL, WAYNE  
MEYER, GERALD GEDDES, JOHN  
GOEDDE, ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN AND MAX BLACK AND  
STEVE LANDON in their capacity as  
member's of the Board of Directors of the State  
Insurance Fund,

Defendants.

CASE NO. CV 09-13607-C

AFFIDAVIT OF DONALD W. LOJEK IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT

**F I L E D**  
1140 A.M. P.M.

SEP 23 2010

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

STATE OF IDAHO )  
: ss.  
County of Ada )

DONALD W. LOJEK, being first duly sworn, upon oath, deposes and says:

1. I am one of the attorneys for the Plaintiffs in the above-entitled matter, and I make this Affidavit based upon my personal and direct knowledge, unless otherwise stated herein.
2. Attached hereto as Exhibit A is a true and correct copy of my workers compensation policy I received from the State Insurance Fund in 2006 pursuant to my request.

DATED: September 21<sup>ST</sup>, 2010.

LOJEK LAW OFFICES, CHTD.



Donald W. Lojek

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of September, 2010.





Notary Public for Idaho

Residing at Boise, Idaho

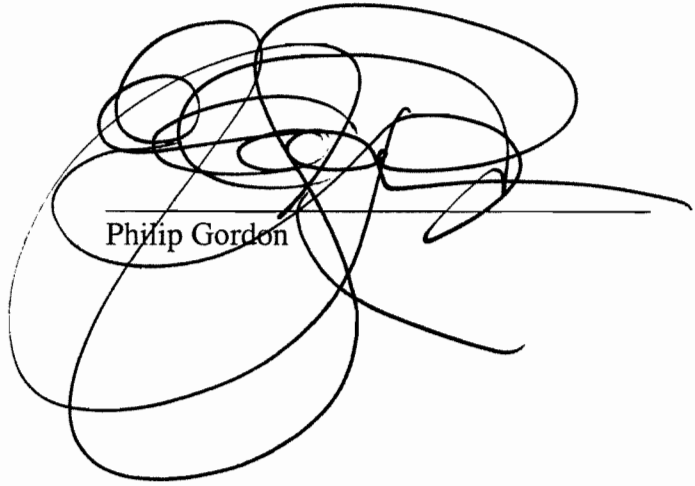
My Commission Expires: May 17, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of September, 2010, I caused the foregoing document to be delivered by the method indicated below and addressed to the following:

Richard E. Hall  
Keely Duke  
Hall Farley Oberrecht & Blanton  
702 W. Idaho St. Ste. 700  
Boise, Idaho 83701

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE 208-395-8585

  
Philip Gordon



# STATE INSURANCE FUND

## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Home Office: 1215 West State Street  
P.O. Box 83720  
Boise, ID 83720-0044

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

### GENERAL SECTION

#### A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

#### B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

#### C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of Idaho named in Item 3.A. of the Information Page. This law shall apply to all public em-

ployment and to all private employment not expressly exempt by the provisions of *Idaho Code* 72-205 and 72-212, unless you have filed an election to come under the law as provided in *Idaho Code* 72-213. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

#### D. State

State means any state of the United States of America, and the District of Columbia.

#### E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. state unless you have other insurance or are self-insured for such workplaces.

## PART ONE – WORKERS COMPENSATION INSURANCE

### A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

### C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

### D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

### E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

### G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

### H. Statutory Provisions

These statements apply where they are required by law:

1. As between an injured worker and us, we have notice of the injury when you have notice. Notice is required from you to us in writing within 10 days of your knowledge of the injury.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
  - a. benefits payable by this insurance;
  - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

## PART TWO - EMPLOYERS LIABILITY INSURANCE

### A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

### B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

### C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily

injury to an employee employed in violation of law;

3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws.
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

### D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

**PART TWO – EMPLOYERS LIABILITY INSURANCE** (continued)

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

**E. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

**F. Other Insurance**

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

**G. Limits of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident-each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

**H. Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**I. Actions Against Us**

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

The bankruptcy or insolvency of you or your estate will not relieve us of our obligation under this Part.

**PART THREE – OTHER STATES COVERAGE**

The State Insurance Fund does not provide other states insurance coverage.

**PART FOUR – YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal pa-

pers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

**PART FIVE – PREMIUM****A. Our Manuals**

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

**B. Classifications**

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

**C. Remuneration**

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

**D. Premium Payments**

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

**E. Final Premium**

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund or credit the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise.

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

**F. Records**

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

**G. Audit**

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

**PART SIX – CONDITIONS****A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

**B. Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

**C. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

PART SIX - CONDITIONS (continued)

D. Cancellation

- 1. You may cancel this policy by giving the Fund at least thirty days written notice of your intention to withdraw from the Fund.
- 2. We may cancel this policy. No policy of insurance or guaranty contract or surety bond issued against liability arising under this act, where the policy, contract or bond is intended to provide coverage of greater than one hundred and eighty (180) days, shall be canceled or not renewed until at least sixty (60) days after notice of cancellation has been filed with the Industrial Commission, and also served on the other contracting party either personally or by certified mail. If cancellation is due to failure to pay premiums, material misrepresentations by the insured, substantial and unforeseen changes in the risk assumed, substantial breaches of contractual duties, conditions of warranties, then at least ten (10) days' notice of cancellation

is required.

- 3. The policy period will end on the day and hour stated in the cancellation notice.
- 4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

F. Automatic Renewal

The insurance under this policy shall automatically renew and continue in full force for succeeding periods of one year.

IN WITNESS WHEREOF: The State Insurance Fund, administered by said State Insurance Fund Manager, at Boise, Idaho, has caused the facsimile signature of said manager to be appended hereto, and countersigned on the Information Page by a duly authorized representative of the Fund.

James M. Alcorn  
Manager

Donald W. Lojek ISBN 1395  
LOJEK LAW OFFICES, CHTD  
623 West Hays Street  
Boise, ID 83701  
Telephone: 208-343-7733  
Facsimile: 208-345-0050

Philip Gordon ISBN 1996  
Bruce S. Bistline ISBN 1988  
GORDON LAW OFFICES  
623 West Hays Street  
Boise, ID 83702  
Telephone: 208/345-7100  
Facsimile: 208/345-0050

*Attorneys for Plaintiffs and the Class*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CDA DAIRY QUEEN, INC., and DISCOVERY  
CARE CENTRE LLC OF SALMON,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE FUND,  
JAMES M. ALCORN, in his official capacity as  
its Manager, and WILLIAM DEAL, WAYNE  
MEYER, GERALD GEDDES, JOHN  
GOEDDE, ELAINE MARTIN, MARK  
SNODGRASS, RODNEY A. HIGGINS,  
TERRY GESTRIN AND MAX BLACK AND  
STEVE LANDON in their capacity as  
member's of the Board of Directors of the State  
Insurance Fund,

Defendants.

**F I L E D**  
7:40 A.M. P.M.

**SEP 23 2010**

**CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY**

CASE NO. CV 09-13607-C

AFFIDAVIT OF PHILIP GORDON IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT

STATE OF IDAHO )  
 : ss.  
County of Ada )

PHILIP GORDON, being first duly sworn, upon oath, deposes and says:

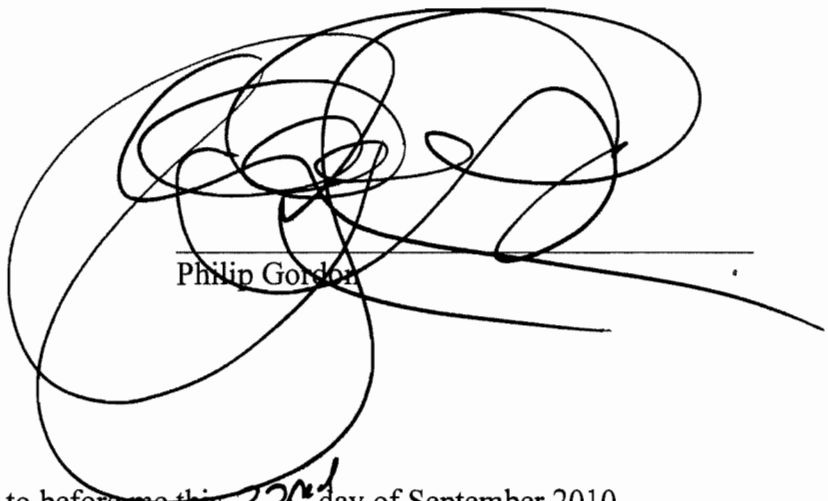
1. I am one of the attorneys for the Plaintiffs in the above-entitled matter, and I make this Affidavit based upon my personal and direct knowledge, unless otherwise stated herein.
2. Attached hereto, bearing document identification numbers # 000001 to # 000077 are a true and correct copies of the "bill" of House Bill 774, the original RS with Statement of Purpose and Fiscal Note, any amending sheets, the minutes of all committee meetings and all attachments to those minutes pertaining to House Bill 774.
3. Attached hereto, bearing document identification numbers # 000078 to # 000087 are true and correct copies of the State Insurance Fund's response to the Plaintiffs' Interrogatory #17 (served on October 20, 2006) in Farber v. The Idaho State Insurance Fund, Canyon County Case # CV06-7887, the original of which is in my possession because I was one of the attorney's of record in that action.
4. Attached hereto, bearing document identification numbers # 000088 to # 000090 (also marked CL 0062 through CL 0064) are true and correct copies of documents produced by the State Insurance Fund as part of their response to the Plaintiffs' Interrogatory #3 (served on October 11, 2006) in Farber v. The Idaho State Insurance Fund, Canyon County Case # CV06-7887.
5. Attached hereto, bearing document identification number # 000091 is a true and correct copy of page 182 of the Deposition of James Alcorn taken on July 13, 2007 in Farber v. The Idaho State Insurance Fund, Canyon County Case # CV06-7887, the original of



- which is in my possession because I was one of the attorney's of record in that action.
6. Attached hereto, bearing document identification numbers # 000092 to # 000095 (also marked CL 0027 through CL 0030) are true and correct copies of documents produced by the State Insurance Fund as part of their response to the Plaintiffs' Request for Production #2 (served on October 11, 2006) and bearing # 000096 to # 000099 (also marked CL 0065 through CL 0068) are true and correct copies of documents produced by the State Insurance Fund as part of their response to the Plaintiffs' Interrogatory #3 (served on October 11, 2006) in Farber v. The Idaho State Insurance Fund, Canyon County Case # CV06-7887.
  7. Attached hereto bearing document identification number # 000100 is a true and correct copy of SB 1166 (2009), bearing document identification number # 000101 is a true and correct copy of Amendments to SB 1166 (2009), bearing document identification numbers # 000102 to # 000113 are true and correct copies of the minutes from the Senate Commerce and Human Resources Committee from April 7, 2009 and April 14, 2009.
  8. Attached hereto bearing document identification numbers # 000114 to # 000118 are true and correct copies of the Cover Sheet, the Index, and Pages 1-3 of the Annual Statement of the Idaho State Insurance Fund for the Year Ended December 31, 2009, which I obtained from the Idaho Department of Insurance.
  9. Attached hereto bearing the document identification number # 000119 is a true and correct copy of the Engrossed Senate Bill No. 1166, aa.

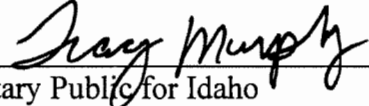
DATED: September 22<sup>nd</sup>, 2010.

GORDON LAW OFFICES, CHTD.



Philip Gordon

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of September, 2010.



Notary Public for Idaho

Residing at Boise, Idaho

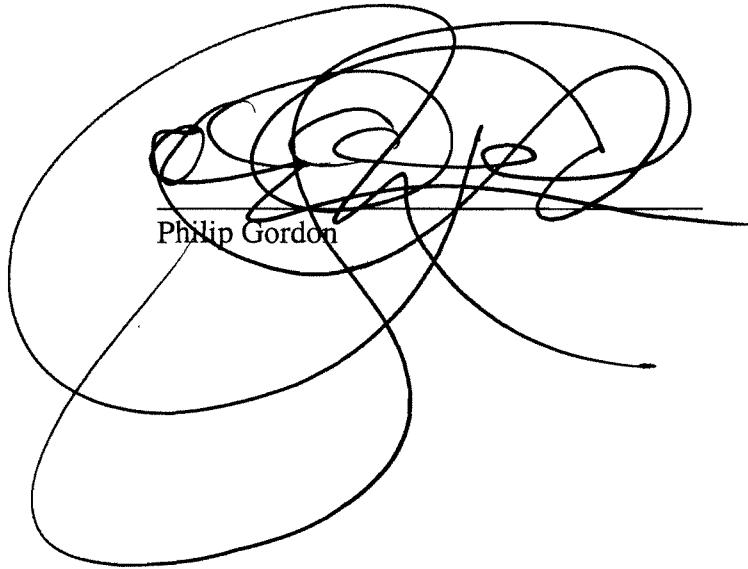
My Commission Expires: 3/28/2013

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of September, 2010, I caused the foregoing document to be delivered by the method indicated below and addressed to the following:

Richard E. Hall  
Keely Duke  
Hall Farley Oberrecht & Blanton  
702 W. Idaho St. Ste. 700  
Boise, Idaho 83701

HAND DELIVERY  
 U.S. MAIL  
 OVERNIGHT MAIL  
 FACSIMILE 208-395-8585



Philip Gordon

|        |  |   |
|--------|--|---|
| H0759  | RS08131                                  | Rev/Tax 2/23/98; 2/25/98; Senate Loc Gov 3/9/98                       |
| H0760  | RS08097C1                                | Rev/Tax 2/23/98; Transp/Def 3/4/98                                    |
| H0761  | RS08124                                  | Rev/Tax 2/23/98; 3/17/98  |
| H0762  | RS07932                                  | Rev/Tax 2/23/98; Hansen Rev/Tax Subcommittee 3/13/98; Rev/Tax 3/17/98 |
| H0763  | RS08082C1                                | Bus 2/25/98   |
| H0764  | RS07528C2                                | Educ 2/23/98; Jud 3/5/98  |
| H0765  | RS08119C1                                | Educ 2/24/98; St Aff 3/5/98   |
| H0766  | RS08127C1                                | Loc Gov 3/4/98; Senate Loc Gov 3/11/98                                |
| H0767  | RS08126                                  | St Aff 2/24/98; Bus 3/3/98  |
| H0768  | RS07920                                  | St Aff 2/24/98; Bus 2/25/98; Senate Comm/Hu Res 3/12/98               |
| H0768a | RS07920E1                                | Senate Comm/Hu Res 3/12/98  |
| H0769  | RS08077                                  | St Aff 2/24/98; Bus 3/3/98  |
| H0770  | RS08014C1                                | St Aff 2/24/98; Bus 3/3/98  |
| H0771  | RS08146                                  | Rev/Tax 2/25/98; Senate Loc Gov 3/11/98                               |
| H0771a | RS08146E1                                | Rev/Tax 2/27/98   |
| H0772  | RS07838C2                                | Env Aff 2/24/98; 3/2/98   |
| H0773  | RS07880                                  | Educ 2/25/98; 3/2/98; House Educ 3/10/98                              |
| H0774  | RS08000C2 ✓                              | St Aff 2/25/98; 3/6/98; 3/10/98; Senate Comm/Hu Res 3/19/98 ✓         |
| H0774a | RS08000E1 - <i>Final version of bill</i> |   |
| H0775  | RS07860C1                                | St Aff 2/25/98; 3/11/98   |
| H0776  | RS08140                                  | W/M 2/25/98; St Aff 3/2/98; Senate St Aff 3/16/98                     |
| H0777  | RS07237C1                                |   |
| H0778  | RS07239C1                                |   |
| H0779  | RS07224                                  |   |
| H0780  | RS07269                                  |   |
| H0781  | RS07276                                  |   |
| H0782  | RS07236                                  |   |
| H0783  | RS07238                                  |   |
| H0784  | RS07262                                  |   |
| H0785  | RS07240                                  |   |
| H0786  | RS08154                                  | Rev/Tax 2/27/98; Transp/Def 3/4/98                                    |
| H0787  | RS08153                                  | Rev/Tax 2/27/98; 3/4/98; 3/5/98; Senate Comm/Hu Res 3/17/98           |

000001

000085

STATEMENT OF PURPOSE

RS08000C2

Relating to the State Insurance Fund, this legislation creates a board of directors to guide the operations of the Fund. This proposal also removes the state fund from the executive office of the Governor and provides that it would become an entity like the Idaho Housing Authority. The reserves and other monies of the fund would continue to be held by the State Treasurer as custodian and invested by the endowment fund investment board. At least two of the five members of the board of directors would be legislators and all directors would be appointed by the Governor subject to confirmation by the senate. A manager of the fund with insurance company management experience would be appointed by the board of directors.

FISCAL NOTE

This legislation will have no fiscal impact on the state or local government.

CONTACT:

Name: Representative Newcomb  
332-1000

Phone:

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 774, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1  
2 RELATING TO THE STATE INSURANCE FUND; AMENDING SECTION 72-901, IDAHO CODE, TO  
3 PROVIDE THAT THE STATE INSURANCE FUND IS AN INDEPENDENT BODY CORPORATE  
4 POLITIC, TO PROVIDE FOR APPOINTMENT OF THE BOARD OF DIRECTORS OF THE STATE  
5 INSURANCE FUND, TO PROVIDE TERMS, TO PROVIDE DUTIES, TO PROVIDE PURPOSES,  
6 TO PROVIDE APPLICATION OF TITLE 41, IDAHO CODE, TO THE FUND, TO PROHIBIT  
7 THE FUND FROM OPERATING AS AN INSURER IN OTHER STATES AND TO MAKE TECHNICAL  
8 CORRECTIONS; AMENDING SECTION 72-902, IDAHO CODE, TO PROVIDE THAT THE  
9 BOARD OF DIRECTORS SHALL APPOINT A MANAGER OF THE STATE INSURANCE FUND, TO  
10 PROVIDE QUALIFICATIONS FOR THE MANAGER AND TO DELETE REFERENCE TO THE  
11 STATE INSURANCE MANAGER ACQUIRING REAL PROPERTY; AMENDING SECTION 72-906,  
12 IDAHO CODE, TO PROVIDE THAT THE MANAGER MAY EMPLOY NECESSARY PERSONNEL, TO  
13 PROVIDE THAT THE PERSONNEL POLICIES AND COMPENSATION SCHEDULES FOR EMPLOYEES  
14 SHALL BE ADOPTED BY THE BOARD OF DIRECTORS AND SHALL BE COMPARABLE IN  
15 SCOPE TO OTHER INSURANCE COMPANIES DOING BUSINESS IN THE STATE AND THE  
16 REGION AND TO PROVIDE THAT EMPLOYEES SHALL BE MEMBERS OF THE PUBLIC  
17 EMPLOYEE RETIREMENT SYSTEM; REPEALING SECTION 72-911, IDAHO CODE; AMENDING  
18 SECTION 41-291, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO FURTHER  
19 DEFINE THE TERM INSURER; AMENDING SECTION 41-4903, IDAHO CODE, TO PROVIDE  
20 A DEFINITION FOR BOARD OF DIRECTORS OF THE STATE INSURANCE FUND; AMENDING  
21 SECTION 41-4904, IDAHO CODE, TO PROVIDE THAT THE IDAHO PETROLEUM CLEAN  
22 WATER TRUST FUND, SUBJECT TO THE DIRECTION AND SUPERVISION OF THE BOARD OF  
23 DIRECTORS OF THE STATE INSURANCE FUND IS HEREBY AUTHORIZED TO INSURE THE  
24 OWNERS AND OPERATORS OF PETROLEUM STORAGE TANKS AGAINST CERTAIN COSTS;  
25 AMENDING SECTION 41-4908, IDAHO CODE, TO PROVIDE A CORRECT CITATION;  
26 AMENDING SECTION 59-904, IDAHO CODE, TO DELETE THE AUTHORITY OF THE GOVERNOR  
27 TO APPOINT THE MANAGER OF THE STATE INSURANCE FUND AND TO PROVIDE THAT  
28 THE GOVERNOR SHALL APPOINT MEMBERS OF THE BOARD OF DIRECTORS OF THE STATE  
29 INSURANCE FUND; AMENDING SECTION 41-309, IDAHO CODE, TO CLARIFY THAT THE  
30 STATE INSURANCE FUND DOES NOT FALL WITHIN THE PROHIBITION AGAINST GOVERNMENT-OWNED  
31 INSURERS; AND DECLARING AN EMERGENCY.

32 Be It Enacted by the Legislature of the State of Idaho:

33 SECTION 1. That Section 72-901, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 72-901. BOARD OF DIRECTORS OF STATE INSURANCE FUND -- CREATION OF STATE  
36 INSURANCE FUND. (1) There is hereby created as an independent body corporate  
37 politic a fund, to be known as the Sstate Insurance Fund, for the purpose of  
38 insuring employers against liability for compensation under this Workmen's  
39 worker's Ecompensation Law and the Occupational Disease Ecompensation Law  
40 and of securing to the persons entitled thereto the compensation provided by  
41 said laws. Such fund shall consist of all premiums and penalties received and  
42 paid into the fund, of property and securities acquired by and through the use  
43 of moneys belonging to the fund, and of interest earned upon moneys belonging

1 to the fund and deposited or invested as herein provided.

2 Such fund shall be administered by ~~the state insurance manager~~ without  
3 liability on the part of the state ~~beyond the amount of such fund~~. Such fund  
4 shall be applicable to the payment of losses sustained on account of insurance  
5 and to the payment of compensation under the ~~Workmen's~~ worker's ~~E~~compensation  
6 ~~Law~~ and the ~~O~~ccupational ~~D~~isease ~~E~~compensation ~~L~~aw and of expenses of  
7 administering such fund.

8 (2) The governor shall appoint five (5) persons to be the board of direc-  
9 tors of the state insurance fund. One (1) member shall be a licensed insurance  
10 agent, one (1) member shall represent businesses of the state, one (1) member  
11 shall be a representative of labor, one (1) member shall be a member of the  
12 state senate and one (1) member shall be a member of the state house of repre-  
13 sentatives. The governor shall appoint a chairman from the five (5) directors.  
14 The directors shall be appointed for terms of four (4) years, except that all  
15 vacancies shall be filled for the unexpired term, provided that the first two  
16 (2) appointments the governor makes after the effective date of this act shall  
17 serve a term of two (2) years and the other three (3) members shall serve a  
18 term of four (4) years. Thereafter, a member shall serve a term of four (4)  
19 years. A certificate of appointment shall be filed in the office of the secre-  
20 tary of state. A majority of the members shall constitute a quorum for the  
21 transaction of business or the exercise of any power or function of the state  
22 insurance fund and a majority vote of the members shall be necessary for any  
23 action taken by the board of directors. The members of the board of directors  
24 shall appoint a manager of the state insurance fund who shall serve at their  
25 pleasure and such other officers and employees as they may require for the  
26 performance of their duties and shall prescribe the duties and compensation of  
27 each officer and employee. Members of the board of directors shall receive a  
28 compensation for service like that prescribed in section 59-509(h), Idaho  
29 Code.

30 (3) It shall be the duty of the board of directors to direct the policies  
31 and operation of the state insurance fund to assure that the state insurance  
32 fund is run as an efficient insurance company, remains actuarially sound and  
33 maintains the public purposes for which the state insurance fund was created.

34 (4) The state insurance fund is subject to and shall comply with the pro-  
35 visions of the Idaho insurance code, title 41, Idaho Code. For purposes of  
36 regulation, the state insurance fund shall be deemed to be a mutual insurer.  
37 The state insurance fund shall not be a member of the Idaho insurance guaranty  
38 association.

39 (5) Nothing in this chapter, or in title 41, Idaho Code, shall be con-  
40 strued to authorize the state insurance fund to operate as an insurer in other  
41 states.

42 SECTION 2. That Section 72-902, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 72-902. STATE INSURANCE MANAGER -- POWERS AND DUTIES OF STATE INSURANCE  
45 MANAGER. ~~There is hereby created in the office of the governor the office of~~  
46 ~~state insurance manager, elsewhere in this chapter referred to as~~ The board of  
47 directors of the state insurance fund shall appoint a manager of the state  
48 insurance fund, whose duties, it subject to the direction and supervision of  
49 the board, shall be to conduct the business of the state insurance fund, and  
50 ~~the said manager is hereby vested with full authority over said fund;~~ and may  
51 do any and all things which are necessary and convenient in the administration  
52 thereof, or in connection with the insurance business to be carried on by the  
53 manager under the provisions of this chapter. Said The manager shall be

1 appointed-by-the-governor-and-shall-serve-during-the-pleasure-of-the governor;  
2 and have skill and expertise in managing and administering within the insur-  
3 ance industry, shall be of good moral character and shall be bonded in the  
4 time, form and manner as prescribed by chapter 8, title 59, Idaho Code.

5 ~~The--state--insurance--manager--may--acquire--real--property--as--a--site--for--an~~  
6 ~~office--building--and--may--construct--thereon--an--office--building--;--or--may--purchase~~  
7 ~~an--office--building--;--and--may--use--for--such--purposes--any--moneys--in--the--fund--that~~  
8 ~~may--be--available--for--investment--;--provided--however--;--that--no--acquisition--;--con-~~  
9 ~~struction--or--purchase--may--be--made--hereunder--without--the--prior--written~~  
10 ~~approval--of--the--board--of--examiners--;--Any--moneys--used--pursuant--to--this--section~~  
11 ~~for--site--acquisition--or--construction--or--purchase--of--an--office--building--shall--;~~  
12 ~~when--so--used--;--constitute--an--investment--of--the--fund--;~~

13 SECTION 3. That Section 72-906, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 72-906. EMPLOYMENT OF ASSISTANTS. The manager,~~subject-to-the-provisions~~  
16 ~~of--chapter--53--;--title--67--;--Idaho--Code--;~~ may employ such assistants, experts,  
17 statisticians, actuaries, accountants, inspectors, clerks, and other employees  
18 as necessary to carry out the provisions of this chapter and to perform the  
19 duties imposed upon him by this chapter. The personnel policies and compensa-  
20 tion schedules for employees shall be adopted by the board of directors and  
21 shall be comparable in scope to other insurance companies doing business in  
22 the state and the region. Employees shall be members of the public employee  
23 retirement system.

24 SECTION 4. That Section 72-911, Idaho Code, be, and the same is hereby  
25 repealed.

26 SECTION 5. That Section 41-291, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 41-291. DEFINITIONS. As used in ~~this-chapter~~ sections 41-290 through and  
29 including section 41-298, Idaho Code:

30 (1) Sections 41-290 through 41-298, Idaho Code, shall be known as the  
31 Idaho Arson and Fraud Reporting-Immunity Act.

32 (2) "Authorized agencies" shall mean:

33 (a) The director, department of law enforcement;

34 (b) The prosecuting attorney responsible for prosecution in the county  
35 where the fire or fraud occurred;

36 (c) The attorney responsible for the prosecution in the county where the  
37 fire or fraud occurred as designated by the attorney general;

38 (d) The department of insurance.

39 (3) Solely for the purpose of section 41-292(1), Idaho Code, "authorized  
40 agencies" shall also include:

41 (a) The United States attorney's office when authorized or charged with  
42 investigation or prosecution of the fire or fraud in question;

43 (b) The federal bureau of investigation or any other federal agency,  
44 charged with investigation or prosecution of the fire or fraud in ques-  
45 tion.

46 (4) "Relevant" means information having any tendency to make the exis-  
47 tence of any fact that is of consequence to the investigation or determination  
48 of the issue more probable or less probable than it would be without the evi-  
49 dence.

50 (5) Material will be "deemed important," if within the sole discretion of



1 the "authorized agency," such material is requested by the "authorized  
2 agency."

3 (6) "Action," as used in this statute, shall include nonaction or the  
4 failure to take action.

5 (7) "Immunity" means that no civil action may arise against any person  
6 for furnishing information pursuant to section 41-248, 41-258, 41-290, 41-292,  
7 41-296 or 41-297, Idaho Code, where actual malice on the part of the insurance  
8 company, department of insurance, state fire marshal, authorized agency, their  
9 employees or agents, is not present.

10 (8) "Financial loss" includes, but is not limited to, loss of earnings,  
11 out-of-pocket and other expenses, repair and replacement costs and claims pay-  
12 ments.

13 (9) "Person" means a natural person, company, corporation, unincorporated  
14 association, partnership, professional corporation and any other legal entity.

15 (10) "Practitioner" means a licensee of this state authorized to practice  
16 medicine and surgery, psychology, chiropractic, law or any other licensee of  
17 the state whose services are compensated, directly or indirectly, by insurance  
18 proceeds, or a licensee similarly licensed in other states and nations or the  
19 practitioner of any nonmedical treatment rendered in accordance with a recog-  
20 nized religious method of healing.

21 (11) "Statement" includes, but is not limited to, any notice statement,  
22 any statement submitted on applications for insurance, proof of claim, proof  
23 of loss, bill of lading, receipt for payment, invoice, account, estimate of  
24 property damages, bills for services, diagnosis, prescription, hospital or  
25 doctor records, X-rays, test results or other evidence of loss, injury or  
26 expense, whether oral, written or computer generated.

27 (12) "Insurer" shall mean any insurance company contemplated by title 41,  
28 Idaho Code, any business operating as a self-insured for any purpose, the  
29 state insurance fund, and any self-insured as contemplated by title 72, Idaho  
30 Code.

31 SECTION 6. That Section 41-4903, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 41-4903. DEFINITIONS. For the purposes of this chapter:

34 (1) "Above ground storage tank" means any one (1) or a combination of  
35 tanks, including pipes connected thereto, that is used to contain an accumula-  
36 tion of petroleum or petroleum products, and the volume of which, including  
37 the volume of pipes connected thereto, is less than ten percent (10%) beneath  
38 the surface of the ground. This term does not include a heating tank, farm  
39 tank or residential tank or any tank with a capacity of one hundred ten (110)  
40 gallons or less.

41 (2) "Accidental release" means any sudden or nonsudden release of petro-  
42 leum from a storage tank that results in a need for corrective action or com-  
43 pensation for bodily injury or property damage neither expected nor intended  
44 by the tank owner or operator.

45 (3) "Administrator" means a person, other than the trustee, employed by  
46 the trustee to administer the Idaho petroleum clean water trust fund.

47 (4) "Application fee" means the amount paid or payable by an owner or  
48 operator applying for a contract of insurance with the trust fund to offset  
49 the costs of issuing contracts of insurance and other costs of administering  
50 this fund.

51 (5) "Board" means the board of directors of the state insurance fund as  
52 established by section 72-901, Idaho Code.

53 (6) "Bodily injury" means any bodily injury, sickness, disease or death

1 sustained by any person and caused by an occurrence defined in subsection  
2 (189) of this section.

3 (67) "Contamination" means the presence of petroleum or petroleum prod-  
4 ucts in surface or subsurface soil, surface water, or ground water.

5 (78) "Commission" means the state tax commission of the state of Idaho.

6 (89) "Corrective action" means those actions as are reasonably necessary  
7 to satisfy applicable federal and state standards in the event of a release  
8 into the environment from a petroleum storage tank. Corrective action includes  
9 initial corrective action response or actions consistent with a remedial  
10 action to clean up contaminated soil and ground water or address residual  
11 effects after initial corrective action is taken, as well as actions necessary  
12 to monitor, assess and evaluate a release. Corrective action also includes the  
13 cost of removing a tank which is releasing or has been releasing petroleum  
14 products and the release cannot be corrected without removing the tank; but  
15 corrective action does not include the cost of replacing this tank with  
16 another tank.

17 (910) "Department" means the department of insurance of the state of  
18 Idaho.

19 (101) "Director" means the director of the department of insurance.

20 (112) "Farm tank" means any tank with a capacity of more than one hundred  
21 ten (110) gallons but less than one thousand one hundred (1,100) gallons situ-  
22 ated above ground or underground which is used for storing motor fuel for non-  
23 commercial purposes and which is located on a tract of land devoted to the  
24 production of crops or raising animals, including fish, and associated resi-  
25 dences and improvements. A farm tank must be located on the farm property.  
26 "Farm" includes fish hatcheries, rangeland and nurseries with growing opera-  
27 tions.

28 (123) "Free product" means petroleum or petroleum products in the  
29 nonaqueous phase, (e.g., liquid not dissolved in water).

30 (134) "Fund" or "trust fund" means the Idaho petroleum clean water trust  
31 fund.

32 (145) "Heating tank" means any tank with a capacity of more than one hun-  
33 dred ten (110) gallons situated above ground or underground which is used for  
34 storing heating oil for consumptive use on the premises where stored.

35 (156) "Legal defense costs" means any expense that an owner or operator or  
36 the trust fund incurs in defending against claims or actions brought by the  
37 federal environmental protection agency or a state agency to require correc-  
38 tive action or to recover the costs of corrective action; or by or on behalf  
39 of a third party for bodily injury or property damage caused by a release.

40 (167) "Licensed distributor" means any distributor who has obtained a  
41 license under the provisions of section 63-2427A, Idaho Code. If a person sub-  
42 ject to the fee imposed by section 41-4908(6), Idaho Code, is not required to  
43 obtain a distributor's license under the provisions of chapter 24, title 63,  
44 Idaho Code, such person shall apply to the commission for a limited license  
45 for the purpose of complying with the requirements of this chapter. Such a  
46 limited license shall not be valid for any other purpose. No bond shall be  
47 required for a limited license. A holder of a limited license is a "licensed  
48 distributor" for the purposes of filing reports, paying fees and other actions  
49 necessary to the proper administration and enforcement of this chapter.

50 (178) "Manager" means the duly appointed manager of the state insurance  
51 fund of the state of Idaho.

52 (189) "Noncommercial purposes" means not for resale, with respect to motor  
53 fuels.

54 (1920) "Occurrence" means an accident, including continuous or repeated  
55 exposure to conditions, which resulted in a release into the environment of

1 petroleum products from a petroleum storage tank.

2 (201) "Operator" means any person in control, or having responsibility  
3 for, the daily operations of a petroleum storage tank.

4 (212) "Owner" means the owner of a petroleum storage tank, except that  
5 "owner" does not include any person who, without participation in the manage-  
6 ment of a petroleum storage tank, holds indicia of ownership primarily to pro-  
7 tect the owner's security interest in the tank.

8 (223) "Person" means any corporation, association, partnership, one (1) or  
9 more individuals, or any governmental unit, or agency thereof, other than fed-  
10 eral or state agencies.

11 (234) "Petroleum" and/or "petroleum products" mean crude oil, or any frac-  
12 tion thereof, which is liquid at standard conditions of temperature and pres-  
13 sure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths  
14 (14.7) pounds per square inch absolute). The term includes motor gasoline,  
15 gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation  
16 fuel.

17 (245) "Property damage" means injury or destruction to tangible property  
18 caused by an occurrence.

19 (256) "Release" means any spilling, leaking, emitting, discharging, escap-  
20 ing, leaching, or disposing from a petroleum storage tank into ground water,  
21 surface water, or surface or subsurface soils.

22 (267) "Residential tank" means any tank with a capacity of more than one  
23 hundred ten (110) gallons but less than one thousand one hundred (1,100) gal-  
24 lons situated above ground or underground which is used for storing motor fuel  
25 for noncommercial purposes and which is located on property used primarily for  
26 dwelling purposes.

27 (278) "Site" means a single parcel of property where petroleum or petro-  
28 leum products are stored in a petroleum storage tank and includes all contigu-  
29 ous land, structures, other appurtenances, surface water, ground water, sur-  
30 face and subsurface soil, and subsurface strata within and beneath the prop-  
31 erty boundary.

32 (289) "State" means the state of Idaho or any office, department, agency,  
33 authority, commission, board, institution, hospital, college, university or  
34 other instrumentality thereof.

35 (2930) "Tank" means a stationary device designed to contain an accumula-  
36 tion of petroleum or petroleum products and constructed of nonearthen mate-  
37 rials (e.g., concrete, steel, plastic) that provide structural support.

38 (301) "Trustee" means the trustee of the Idaho petroleum clean water trust  
39 fund, who for the purposes of this chapter shall be the manager of the state  
40 insurance fund of the state of Idaho.

41 (312) "Underground storage tank" means any one (1) or combination of  
42 tanks, including underground pipes connected thereto, that is used to contain  
43 an accumulation of petroleum or petroleum products, and the volume of which,  
44 including the volume of underground pipes connected thereto, is ten percent  
45 (10%) or more beneath the surface of the ground. This term does not include  
46 any:

47 (a) Farm or residential tank of one thousand one hundred (1,100) gallons  
48 or less capacity used for storing motor fuel for noncommercial purposes;

49 (b) Tank used solely for storing heating oil for consumptive use on the  
50 premises where stored;

51 (c) Septic tank;

52 (d) Pipeline facility including gathering lines regulated under:

53 (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app.  
54 1671, et seq.); or

55 (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C.

- 1 app. 2001, et seq.); or  
 2 (iii) State laws comparable to the provisions of the law referred to  
 3 in paragraph (d)(i) or (d)(ii) of this subsection as an intrastate  
 4 pipeline facility;  
 5 (e) Surface impoundment, pit, pond or lagoon;  
 6 (f) Storm water or wastewater collection system;  
 7 (g) Flow-through process tank;  
 8 (h) Liquid trap or associated gathering lines directly related to oil or  
 9 gas production and gathering operations;  
 10 (i) Storage tank situated in an underground area (such as a basement,  
 11 cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situ-  
 12 ated upon or above the surface of the floor;  
 13 (j) Tanks with a capacity of one hundred ten (110) gallons or less.

14 The term "underground storage tank" does not include any pipes connected to  
 15 any tank which is described in paragraphs (a) through (i) of this definition.

16 (323) "Underground storage tank regulations" means regulations for petro-  
 17 leum storage tanks promulgated by the United States environmental protection  
 18 agency (EPA) pursuant to subtitle I of the solid waste disposal act, as  
 19 amended by the resource conservation and recovery act, regulations promulgated  
 20 by the state of Idaho as part of a state program for underground storage tank  
 21 regulation under subtitle I, or other regulations affecting underground stor-  
 22 age tank operations and management, including the uniform fire code adopted by  
 23 the state of Idaho.

24 SECTION 7. That Section 41-4904, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 41-4904. CREATION, AUTHORIZATION AND MANAGEMENT OF THE IDAHO PETROLEUM  
 27 CLEAN WATER TRUST FUND. (1) The Idaho petroleum clean water trust fund is  
 28 hereby created, subject to the direction and supervision of the board, and the  
 29 manager of the state insurance fund is hereby authorized to utilize this trust  
 30 fund for the purpose of insuring governmental and private entities who are  
 31 owners and operators of petroleum storage tanks against the costs of correc-  
 32 tive action and compensating third parties that are legally entitled to  
 33 receive compensation for bodily injury and property damage arising out of  
 34 accidental releases of petroleum from petroleum storage tanks covered by a  
 35 contract of insurance between the owner or operator and the trust fund. The  
 36 manager shall be the trustee of this fund, and shall appoint an administrator  
 37 of this fund who shall be an employee of the state insurance fund.

38 (2) Nothing in this chapter shall enlarge or otherwise adversely affect  
 39 the legal liability of any legal entity insured by the trust fund, and any  
 40 immunity or other bar to a civil lawsuit under Idaho or federal law shall  
 41 remain in effect. The fact that the trust fund insures the legal liability of  
 42 any legal entity and thus may relieve the entity or an employee of the entity  
 43 from the payment of any judgment arising from a civil lawsuit, shall not be  
 44 communicated to the trier of fact in such a lawsuit.

45 (3) The trust fund shall consist of all application fees and all transfer  
 46 fees collected pursuant to section 41-4908, Idaho Code, all other moneys  
 47 received and paid into the trust fund, property and securities acquired by or  
 48 through the use of money belonging to the trust fund, money loaned to the  
 49 trust fund under the terms and agreements of a subordinated note of indebted-  
 50 ness or borrowed surplus as hereinafter defined and authorized, and of inter-  
 51 est earned on money and securities owned or in the possession of the trust  
 52 fund under an agreement that such investment earnings can accrue to the bene-  
 53 fit of the trust fund.

1 (4) The trust fund shall have the powers and privileges of a nonprofit  
2 corporate entity and in its name may sue and be sued in any court of competent  
3 jurisdiction, and may lease and maintain offices and space for its departmen-  
4 tal and operational facilities, subject to the provisions of chapters 6 and 7,  
5 title 41, Idaho Code.

6 (5) (a) The personnel costs, operating expenditures and capital outlay  
7 budget of the trust fund shall be subject to review and approval in the  
8 appropriation of the state insurance fund, and it is the intent of this  
9 chapter that the trust fund be a self-supporting insurance fund, so that  
10 no appropriations, loans, or other transfers of state funds need to be  
11 made to the trust fund except as follows:

12 (i) A temporary line of credit for the initial start-up costs of  
13 the trust fund may be obtained as provided in paragraph (b) of this  
14 subsection; and

15 (ii) A temporary line of credit to offset any temporary shortages in  
16 the operating fund balance of the trust fund may be obtained as pro-  
17 vided in paragraph (b) of this subsection.

18 (b) There is hereby established a temporary line of credit to be drawn  
19 from the state general account to the trust fund account in the amount of  
20 one million dollars (\$1,000,000). This amount of money is continuously  
21 appropriated for the purposes of this chapter. The temporary line of  
22 credit may be drawn upon by the trust fund only during the first eighteen  
23 (18) months after the effective date of this chapter and only for the pur-  
24 pose of financing the initial start-up costs of the trust fund and any  
25 temporary shortages in the operating fund balance of the trust fund. The  
26 manager may draw upon all or part of the temporary line of credit, as  
27 shall be required. The money advanced from the state general account shall  
28 be repaid with interest from surplus moneys in the trust fund to the gen-  
29 eral account within one (1) year from the date the trust fund commences to  
30 issue contracts of insurance. Interest of ten percent (10%) per annum  
31 shall be calculated upon the principal amount outstanding each month until  
32 repaid.

33 (c) In the event the trust fund is unable to repay the funds drawn from  
34 the state general account under the temporary line of credit established  
35 under paragraph (b) of this subsection due to the dissolution of the trust  
36 fund pursuant to a court order, then an amount necessary to repay the line  
37 of credit shall be appropriated by the next regular session of the state  
38 legislature.

39 (d) Funds obtained from the temporary line of credit shall constitute a  
40 subordinated indebtedness subject to the provisions of section 41-4943,  
41 Idaho Code.

42 (6) The manager of the state insurance fund, as trustee of the trust  
43 fund, shall enter into a management and administrative contract with the state  
44 insurance fund to provide the following services to the trust fund:

45 (a) Administrative functions including the hiring of qualified personnel  
46 and the payment of salaries and wages earned, plus recordkeeping for the  
47 personnel hired to provide services for the trust fund.

48 (b) Accounting and recordkeeping of all receipts and disbursements of the  
49 trust fund.

50 (c) Underwriting functions of the trust fund to issue contracts of lia-  
51 bility insurance and charge appropriate application fees under section  
52 41-4908, Idaho Code, for such contracts and keep accurate statistical  
53 records.

54 (d) Claims handling functions of the trust fund to process and pay appro-  
55 priate claims in a prompt, fair and reasonable manner.

1 (e) Auditing functions of the trust fund to maintain accurate records of  
2 receipts and disbursements by the trust fund and accurate reporting of  
3 statistics by owners or operators of storage tanks covered by a contract  
4 of insurance issued by the trust fund.

5 (f) Actuarial functions of the trust fund to maintain credible and viable  
6 statistics, sufficient operating fund balances, and appropriate loss  
7 reserves.

8 (g) Computer and data processing functions to assist the trust fund in  
9 maintaining complete and accurate records in a timely manner and issue  
10 loss payments and other disbursements, as well as provide individual sta-  
11 tistics and records of storage tanks covered by a contract of insurance  
12 issued by the trust fund.

13 (h) Computer programming functions to maintain a proficient and current  
14 data processing system for the trust fund.

15 (i) Legal services for the trust fund.

16 (j) Any and all other functions the manager of the state insurance fund  
17 as trustee deems prudent and reasonable to assure the successful operation  
18 of the trust fund.

19 (7) The Idaho petroleum clean water trust fund shall be administered  
20 without liability on the part of the state insurance fund or the state of  
21 Idaho beyond the amount of said trust fund.

22 (8) The administrator, subject to the approval of the manager of the  
23 state insurance fund as trustee, shall have the power to receive and account  
24 for all moneys paid into the trust fund, accept and evaluate applications for  
25 insurance coverage and issue the contracts of insurance and evaluate, investi-  
26 gate and adjust claims made against the trust fund and make agreements for  
27 corrective actions or compensation to third parties for bodily injury or prop-  
28 erty damage those parties may be legally entitled to receive from the trust  
29 fund in accordance with the provisions of this chapter.

30 (9) The administrator, with the approval of the trustee, shall establish  
31 underwriting procedures to issue contracts of insurance and claim procedures.  
32 The administrator shall be given notice of all applications, hearings and pro-  
33 ceedings involving the rights of the trust fund and shall represent the trust  
34 fund in all proceedings. The administrator's decisions shall be written, and  
35 shall include all reasons for his decisions and shall be subject to judicial  
36 review in the district court of Ada county; provided, however, that the admin-  
37 istrator and the trust fund shall not be liable for alleged bad faith or other  
38 legal theories based on any method or timing of the claims processed on his  
39 decision.

40 (10) The manager of the state insurance fund may employ legal counsel or  
41 obtain legal counsel through the attorney general concerning all legal matters  
42 arising out of the existence and operation of the trust fund, including claims  
43 made against the contracts of insurance issued by the administrator of the  
44 trust fund.

45 (11) The manager of the state insurance fund may also employ such employ-  
46 ees or contract for such services as are necessary to assist in the adminis-  
47 tration of the trust fund, and all such administrative expenses incurred by  
48 the state insurance fund for the benefit of the trust fund shall be reimbursed  
49 by the trust fund.

50 (12) The administrator may, in his official capacity, sue and be sued in  
51 all courts of the state, and shall be entitled to a defense by the state of  
52 Idaho for any alleged acts of negligence that may arise out of his official  
53 duties as administrator and/or as an employee of the state of Idaho.

54 SECTION 8. That Section 41-4908, Idaho Code, be, and the same is hereby

1 amended to read as follows:

2 41-4908. SOURCE OF TRUST FUND -- APPLICATION FEES -- APPLICATION FOR  
3 ENROLLMENT -- TRANSFER FEES. (1) Every owner or operator of an underground  
4 storage tank may, if he desires to apply to the trust fund to insure the  
5 underground tank, make application for and pay into the trust fund an initial  
6 application fee set by the administrator, but not to exceed twenty-five dol-  
7 lars (\$25.00) for each tank for which application for coverage is made.

8 (2) Every owner or operator of an above ground storage tank may, if he  
9 desires to apply to the trust fund to insure the above ground tank, make  
10 application for and pay into the trust fund an initial application fee set by  
11 the administrator, but not to exceed twenty-five dollars (\$25.00) for each  
12 tank for which application for coverage is made.

13 (3) Every owner or operator of a farm tank or residential tank may, if he  
14 desires to apply to the trust fund to insure the tank, make application for  
15 and pay into the trust fund an initial application fee set by the administra-  
16 tor, but not to exceed twenty-five dollars (\$25.00) for each tank for which  
17 application for coverage is made.

18 (4) Every owner or operator of a heating tank may, if he desires to apply  
19 to the trust fund to insure the tank, make application for and pay into the  
20 trust fund an initial application fee set by the administrator, but not to  
21 exceed five dollars (\$5.00) for each tank for which application for coverage  
22 is made.

23 (5) The application for insurance shall be made to the administrator on  
24 forms furnished and prescribed by him for the purpose of eliciting reasonably  
25 available information as to the type and use of the storage tank, the type of  
26 business enterprise of the tank owner or operator, the age of the storage  
27 tank, the materials used in the construction of the tank and the inside and  
28 outside protective coatings and other corrosion protective measures, leak  
29 detection methods, spill and overflow prevention methods of the tank, the  
30 location of the tank and its proximity to roads and buildings, the foundation  
31 and type of material used as a bedding and fill for the tank, any available  
32 inspection records of the tank including the gallons of petroleum products  
33 entered into the tank and the gallon dispersements from the tank, and other  
34 information that is reasonably prudent in order to obtain a sufficient body of  
35 statistical data to determine the relative hazards of various categories of  
36 tanks, the potential that future leaks or discharges may occur, and the condi-  
37 tions under which cleanup costs and personal injury and property damage costs  
38 may occur and vary in the severity of the release and the resultant costs to  
39 the trust fund.

40 (6) The administrator shall act upon the application for insurance with  
41 all reasonable promptness, and he shall make such investigations of the appli-  
42 cant as he deems advisable to determine if the information contained in the  
43 application for insurance is accurate and complete. The administrator shall  
44 determine if the applicant's storage tanks meet all the eligibility require-  
45 ments and promptly notify the applicant of the acceptance or nonacceptance of  
46 the application for insurance. The absence of unknown data requested on the  
47 application shall not preclude an applicant's acceptance for coverage by the  
48 trust fund, if the applicant is otherwise eligible for insurance under this  
49 chapter.

50 (7) In addition to the application fees received by the trust fund pursu-  
51 ant to this section, the trust fund shall receive the revenue produced by the  
52 imposition of a "transfer fee" of one cent (\$.01) per gallon on the delivery  
53 or storage of all petroleum products as defined in subsection (234) of section  
54 41-4903, Idaho Code, delivered or stored within the state of Idaho. This

1 transfer fee is hereby imposed upon the first licensed distributor who trans-  
2 fers title to a petroleum product to another legal entity within this state  
3 for the privilege of engaging in the delivery or storage of petroleum products  
4 whose delivery or storage may present the danger of a discharge into the envi-  
5 ronment and thus create the liability to be funded. The fee imposed by this  
6 subsection shall not apply to (a) petroleum or petroleum products which are  
7 first delivered or stored in this state in a container of fifty-five (55) gal-  
8 lons or less if such container is intended to be transferred to the ultimate  
9 consumer of the petroleum or petroleum products or (b) petroleum or petroleum  
10 products delivered or stored in this state for the purpose of packaging or  
11 repackaging into containers of fifty-five (55) gallons or less if such con-  
12 tainer is intended to be transferred to the ultimate consumer of the petroleum  
13 or petroleum products.

14 (8) The transfer fee shall be collected by the commission on all petro-  
15 leum products delivered or stored within this state after April 1, 1990. This  
16 transfer fee shall be in addition to any excise tax imposed on gasoline and/or  
17 aircraft engine fuel or other petroleum products and shall be remitted to the  
18 commission with the distributor's monthly report as required in section  
19 63-2406, Idaho Code. The distributor may deduct from his monthly report those  
20 gallons of petroleum products returned to a licensed distributor's refinery or  
21 pipeline terminal storage or exported from the state when supported by proper  
22 documents approved by the commission. For the purpose of carrying out its  
23 duties under the provisions of this chapter, the commission shall have the  
24 powers and duties provided in sections 63-3038, 63-3039, 63-3042 through  
25 63-3066, 63-3068, 63-3071, and 63-3074 through 63-3078, Idaho Code, which sec-  
26 tions are incorporated by reference herein as though set out verbatim.

27 (9) No person shall be excused from liability for any duty or fee imposed  
28 in this chapter for failure to obtain a distributor's license.

29 (10) The director shall certify to the commission when the unencumbered  
30 balance in the trust fund equals thirty million dollars (\$30,000,000). Effec-  
31 tive the first day of the second month following the date of such certifica-  
32 tion, the imposition of the transfer fee shall be suspended. Thereafter, the  
33 director shall certify to the commission when the unencumbered balance in the  
34 trust fund equals twenty million dollars (\$20,000,000). Effective the first  
35 day of the second month following the date of such certification, the imposi-  
36 tion of the transfer fee shall be reinitiated.

37 SECTION 9. That Section 59-904, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 59-904. STATE OFFICES -- VACANCIES, HOW FILLED AND CONFIRMED. (a) All  
40 vacancies in any state office, and in the supreme and district courts, unless  
41 otherwise provided for by law, shall be filled by appointment by the governor.  
42 Appointments to fill vacancies pursuant to this section shall be made as pro-  
43 vided in subsections (b), (c), (d), (e), and (f) of this section, subject to  
44 the limitations prescribed in those subsections.

45 (b) Nominations and appointments to fill vacancies occurring in the  
46 office of lieutenant governor, state controller, state treasurer, superintend-  
47 ent of public instruction, attorney general and secretary of state shall be  
48 made by the governor, subject to the advice and consent of the senate, for the  
49 balance of the term of office to which the predecessor of the person appointed  
50 was elected.

51 (c) Nominations and appointments to and vacancies in the following listed  
52 offices shall be made or filled by the governor subject to the advice and con-  
53 sent of the senate for the terms prescribed by law, or in case such terms are



1 not prescribed by law, then to serve at the pleasure of the governor:

2 Director of the department of administration,

3 Director of the department of finance,

4 Director of the department of insurance,

5 Director, department of agriculture,

6 Director of the department of labor,

7 Director of the department of water resources,

8 Director of the department of law enforcement,

9 Director of the department of commerce,

10 Director of the department of juvenile corrections,

11 The state historic preservation officer,

12 ~~Manager of the state insurance fund;~~

13 Member of the state tax commission,

14 Members of the board of regents of the university of Idaho and the state  
15 board of education,

16 Members of the Idaho water resources board,

17 Members of the state fish and game commission,

18 Members of the Idaho transportation board,

19 Members of the state board of health and welfare,

20 Members of the board of directors of state parks and recreation,

21 Members of the board of correction,

22 Members of the industrial commission,

23 Members of the Idaho public utilities commission,

24 Members of the Idaho personnel commission,

25 Members of the board of directors of the Idaho state retirement system,

26 Members of the board of directors of the state insurance fund.

27 (d) Appointments made by the state board of land commissioners to the  
28 office of director, department of lands, and appointments to fill vacancies  
29 occurring in those offices shall be submitted by the president of the state  
30 board of land commissioners to the senate for the advice and consent of the  
31 senate in accordance with the procedure prescribed in this section.

32 (e) Appointments made pursuant to this section while the senate is in  
33 session shall be submitted to the senate forthwith for the advice and consent  
34 of that body. The appointment so made and submitted shall not be effective  
35 until the approval of the senate has been recorded in the journal of the sen-  
36 ate. Appointments made pursuant to this section while the senate is not in  
37 session shall be effective until the appointment has been submitted to the  
38 senate for the advice and consent of the senate. Should the senate adjourn  
39 without granting its consent to such an interim appointment the appointment  
40 shall thereupon become void and a vacancy in the office to which the appoint-  
41 ment was made shall exist.

42 All appointments made pursuant to subsection (c) of this section, except  
43 those appointments for which a term of office is fixed by law, shall terminate  
44 at the expiration of any gubernatorial term. Appointments to fill the vacan-  
45 cies thus created by the expiration of the term of office of the governor  
46 shall be forthwith submitted to the senate for the advice and consent of that  
47 body, and when so submitted shall be as expeditiously considered as possible.

48 Upon receipt of an appointment in the senate for the purpose of securing  
49 the advice and consent of the senate, the appointment shall be referred by the  
50 presiding officer to the appropriate committee of the senate for consideration  
51 and report prior to action thereon by the full senate.

52 (f) It is the intent of the legislature that the provisions of this sec-  
53 tion as amended by this act shall not apply to appointments which have been  
54 made prior to the effective date of this act. It is the further intent of the  
55 legislature that the provisions of this section shall apply to the offices

1 listed in this section and to any office created by law or executive order  
2 which succeeds to the powers, duties, responsibilities and authorities of any  
3 of the offices listed in subsections (c) and (d) of this section.

4 SECTION 10. That Section 41-309, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 41-309. GOVERNMENT-OWNED INSURERS NOT TO BE AUTHORIZED. No insurer the  
7 voting control or ownership of which is held in whole or substantial part by  
8 any government or governmental agency, or which is operated for or by any such  
9 government or agency, other than the Idaho state insurance fund, shall be  
10 authorized to transact insurance in this state. Membership in a mutual  
11 insurer, or subscribership in a reciprocal insurer, or ownership of stock of  
12 an insurer by the alien property custodian or similar official of the United  
13 States, or supervision of an insurer by public insurance supervisory authority  
14 shall not be deemed to be an ownership, control, or operation of the insurer  
15 for the purposes of this subsection.

16 SECTION 11. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after its  
18 passage and approval.

Moved by Stone

Seconded by Deal

IN THE HOUSE OF REPRESENTATIVES  
HOUSE AMENDMENTS TO H.B. NO. 774

AMENDMENT TO SECTION 1

1  
2 On page 2 of the printed bill, delete lines 33 through 41, and insert:  
3 "(4) The state insurance fund is subject to and shall comply with the  
4 provisions of the Idaho insurance code, title 41, Idaho Code. For purposes of  
5 regulation, the state insurance fund shall be deemed to be a mutual insurer.  
6 The state insurance fund shall not be a member of the Idaho insurance guaranty  
7 association."; following line 41, insert:  
8 "(5) Nothing in this chapter, or in title 41, Idaho Code, shall be con-  
9 strued to authorize the state insurance fund to operate as an insurer in other  
10 states."

AMENDMENTS TO THE BILL

11  
12 On page 3, delete lines 24 through 34, and insert:  
13 "SECTION 4. That Section 72-911, Idaho Code, be, and the same is hereby  
14 repealed."  
15 On page 13, following line 13, insert:  
16 "SECTION 10. That Section 41-309, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 41-309. GOVERNMENT-OWNED INSURERS NOT TO BE AUTHORIZED. No insurer the  
19 voting control or ownership of which is held in whole or substantial part by  
20 any government or governmental agency, or which is operated for or by any such  
21 government or agency, other than the Idaho state insurance fund, shall be  
22 authorized to transact insurance in this state. Membership in a mutual  
23 insurer, or subscribership in a reciprocal insurer, or ownership of stock of  
24 an insurer by the alien property custodian or similar official of the United  
25 States, or supervision of an insurer by public insurance supervisory authority  
26 shall not be deemed to be an ownership, control, or operation of the insurer  
27 for the purposes of this subsection."; and in line 14, delete "10" and insert:  
28 "11".

CORRECTION TO TITLE

29  
30 On page 1, in line 6, following "FUND" insert: ", TO PROHIBIT THE FUND  
31 FROM OPERATING AS AN INSURER IN OTHER STATES"; delete lines 16 through 18, and  
32 insert: "LIC EMPLOYEE RETIREMENT SYSTEM; REPEALING SECTION 72-911, IDAHO CODE;  
33 AMENDING SECTION 41-291, IDAHO"; and in line 29, following "FUND;" insert:  
34 "AMENDING SECTION 41-309, IDAHO CODE, TO CLARIFY THAT THE STATE INSURANCE FUND  
35 DOES NOT FALL WITHIN THE PROHIBITION AGAINST GOVERNMENT-OWNED INSURERS;"

Minutes

## HOUSE STATE AFFAIRS

DATE: February 25, 1998

TIME: 9:00 A.M.

PLACE: Room 412

MEMBERS: Crane, Deal, Stone, Loertscher, Newcomb, Tippetts, Alltus, Hornbeck, Kjellander, Field, Stevenson, Denney, Ellsworth, Jones, Kunz, McKague, Wheeler, Stoicheff, Marley, Judd, Henbest.

ABSENT/  
EXCUSED:

Chairman Crane called the meeting to order at: 9:06 A.M.  
Representative Jones moved to approve the minutes as presented. Motion Carried.

RS08135 Treasurer Edwards gave a background and referred to handouts (See attached) to further explain the reasons for this RS. Underground storage tanks are expensive to replace and EPA has threatened to close down stations who couldn't comply. The Treasurer was approached to provide funds for Small Business Administration (SBA) loans for tank removal. Representative Jones: Can you resell the loans? Treasurer: No, they are SBA Loans, they don't belong to the state. Representative Hornbeck: You are guaranteeing the loans? Treasurer: SBA buys them from me the state is not at risk.  
MOTION: Representative Hornbeck moved to print. Motion Carried.

RS08139 Representative Stoicheff explained this replaces HJR-3. The Dept. of Lands has the ability to raise rates without a ceiling. They are the only Department without legislative review. This will provide that.

MOTION: Representative Newcomb moved to introduce RS08139 and send directly to the second reading calendar. Discussion. Representative Stoicheff: this has nothing to do with cabin or grazing leases. Sponsor: Stoicheff.

RS07836 Representative Watson said this changes Section 34-614. This RS would change the minimum age to run for the State Legislature to 19. There was discussion as to the need for this and concern as to the maturity level of a 19 year old. Representative Watson has a constituent who is 19 and he would be an asset. He concurred this is not always the case at 19.

MOTION: Representative Henbest moved to introduce RS07836. Motion failed 7-13.

RS07860C1 Representative Watson referred to the Clark House bill from last year in his explanation of this RS. What this does is described best in the last paragraph of the last page. It allows the individual counties through the county commissioners to, at their option, issue liquor licenses within 5 miles outside of the city limits. There is criteria, they have to serve food, have been in business at least 2 years, this is a non transferrable license. If they go out of business it goes with them and they have to be involved in the tourist & recreation industry. Representative Watson feels this narrows it enough to make sure there is some history with an establishment. His co-sponsor is a businessman who is effected by the current liquor laws and Representative Watson read from a letter he wrote explaining his position. Representative Alltus: For example, I paid \$250,000 for my liquor license several years ago and now my competition down the street has one

practically given to him. What should I tell the constituent that comes to me with that feeling. Representative Watson: Well, that is a problem and there are bound to be those comments. But the number of establishments that will qualify under this criteria is very low, 1-2% statewide.

MOTION:

Representative Wheeler moved to print RS0836C1. Representative Field made a substitute motion to return to sponsor. Discussion: Representative Field feels this needs more study and perhaps an interim committee could study the whole picture and recommend liquor law changes overall but we shouldn't do this. Representative Hornbeck expressed her support of the bill. Representative Loertscher supported the substitute motion and mentioned this comes up a lot. We need an interim committee. Representative Kunz supported the substitute motion and expounded on the way liquor licenses are traded "like a commodity" in Idaho. Representative Tippetts supported returning this to the sponsor. Representative Henbest wanted it introduced. Representative Judd asked Representative Watson if, in drafting this, a population base was taken into consideration. Representative Watson, no, but that's a great idea. Chairman Crane called for a show of hands on the substitute motion to return this RS to the sponsor. Motion failed 10-11. Original motion to introduce passed and the bill was introduced.

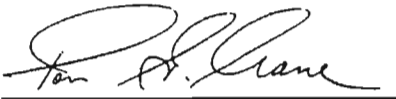
RS08000C2

Representative Newcomb presented this RS to re organize the State Insurance Fund. It provides for an Independent Board similar to the Id. Housing Authority. The Governor would appoint 5 people, as indicated on Page 2, Line 7 and would cause it to operate more like an insurance company in the private sector.

MOTION:

Representative Deal moved to introduce RS08000C2. Representative Stoicheff asked for further clarification. Representative Newcomb said this legislation is a result of a task force this summer. Representative Stoicheff: Why the emergency clause? Representative Newcomb: The Insurance fund is currently without a manager and they need to get one hired. Mr. Alcorn from the State Insurance Fund yielded for questions. He explained the department's various problems including some computer problems and explained the function of the fund which is to provide Worker's Comp insurance. This would allow them to operate more efficiently. Representative Deal stated that he served on the study committee and provided some insight into the intent and stated that there is a serious need to have a manager that has insurance experience. Representative Stevenson: Did the task force consider privatizing the fund? Mr. Alcorn: Yes, but it is a small market, a small fund and in the event the market would shrink there wouldn't be anybody to provide this mandated coverage. It has to be covered by the state to guarantee it's existence. Some discussion ensued as to the need for a 5 member board as opposed to just a manager. Chairman Crane called for a vote. Motion Carried.

Meeting adjourned: 10:15 A.M.

  
Ron G. Crane, Chairman

  
Kathryn Mooney, Secretary

## HOUSE STATE AFFAIRS

DATE: March 6, 1998

TIME: 8:30 A.M.

PLACE: Room 412

MEMBERS: Crane, Deal, Stone, Loertscher, Newcomb, Tippets, Alltus, Hornbeck, Kjellander, Field, Stevenson, Denney, Ellsworth, Jones, Kunz, McKague, Wheeler, Stoicheff, Marley, Judd, Henbest.

ABSENT/  
EXCUSED:

*Any referenced attachments made available to the committee are attached to the secretary's book and the library copy for permanent record.*

Chairman Crane called the meeting to order at: 8:37 A.M.

Representative Hornbeck moved to approve the minutes with the following correction: "assisted in drafting the bill and" is deleted and the Motion Carried.

RS08177 Representative Taylor explained this pending rule is rejected. This is to assure that legislative intent is correct rather than dealing with it through a rule.

MOTION: Representative Alltus moved to introduce. Motion Carried.

H0558 Representative Callister presented his bill which provides a method for a candidate to deal with contributions which exceed statutory limitations.

MOTION: Representative Stoicheff moved to send H558 to the floor with a do pass recommendation. SPONSOR: Callister

RS08058C1 Representative Stubbs upon reminding the committee of this same legislation addressed last year, he simply explained that it rescinds Idaho's several calls over the years for a constitutional convention. This would rescind all calls including the current one regarding the balanced budget amendment supported by US Senator Larry Craig. Representative Stubbs also offered George Detweiler's expertise on the constitution. Representative Alltus: Why was this killed before? Representative Stubbs, It rescinds the balanced budget amendment. Representative Alltus: Article 5 was put in place by our forefathers and I don't feel it's such a bad idea. Representative Stubbs: It's not a bad idea but having 7-8 calls sitting there is like having unexploded ordinance. We need to clean it up. Representative Alltus: Senator Craig's office doesn't want this. Representative Stubbs: I know, but having that call out there could be used to trigger a number of things. This would wipe the slate clean. Mr. Detweiler yielded to questions and then expounded on his beliefs. He didn't know how many calls there were exactly or specifically what they are but did point out that even Chief Justice Warren Berger cautioned against a constitutional convention.

MOTION: Representative Alltus moved the RS be returned to sponsor. Substitute motion offered by Representative Tippets to introduce RS0858C1. Amended substitute motion by Representative McKague to introduce and send to the 2nd reading calendar. Vote on the amended substitute motion failed 7-10. Vote on the substitute motion to introduce carried. Representative Alltus voted in opposition.

RS08183 Representative Sali presented this request for a constitutional amendment. Upon a brief

presentations. Representative Tippetts informed him, reading from the House Rules book, that introduction of constitutional amendments is not permitted after the 35th legislative day. There is a way to get around that, by using a petition. Have you done that?  
Representative Sali: No, I was under the impression you just introduced an amendment.  
Representative Tippetts: No, it dealt with the constitution it wasn't an amendment.  
Representative Tippetts read from the House Rules Book. Representative Sali asked that the committee return to sponsor.

**MOTION:** Representative Alltus moved to return to sponsor. Motion Carried.

**RS08181** Representative Sali explained intent on his request for this HCR dealing with U.S. HR304 currently in congress. It requests an investigation for impeachment of President William Clinton. In lines 15-21 Representative Sali read from HR304, if he's found innocent he ought to be cleared so we, as a country can move on. If not, we can call for impeachment.

**MOTION:** Representative Hornbeck moved to introduce RS08181. Debate: Representative Stoicheff asked for a copy of HR304. Representative Sali had one copy and read from it. Representative Kjellander: In your research for this RS did you discover and could you tell us what this body did during the Nixon investigation? Representative Sali: During the process President Nixon resigned. Representative Sali didn't know what Idaho did with regard to the Nixon investigation.

**Substitute  
Motion**

Representative Stoicheff moved to return to sponsor. He pointed out that on line 14 it says "if proven to be true". Nothing has been proven yet. Representative Hornbeck: At least during Nixon they were doing an investigation. They won't even do one on Pres. Clinton, This calls for that. We need to support our congress. Representative Stoicheff: Mr. Starr is running an investigation. Representative Judd requested a copy of HR304. Chairman Crane called for a vote on the substitute motion. Motion Carried.

**H0774** Michael Brassey presented this bill upon Representative Deals' request. He served on the interim committee to restructure the State Insurance Fund. This moves the fund from the Office of the Governor to an individual entity, giving it the same status as the Housing Authority. The reason is; the fund has grown dramatically. It is a large fund and needs to be handled independently. It was created to assure that Idaho was guaranteed a worker's compensation carrier. Currently the fund is not subject to the same regulations as private insurance companies. This would do that. Mr Brassey also reviewed amendments handed out to committee and attached herein, and requested this go to general orders. Representative Alltus: How much, by statute, is the fund allowed to have in reserve? Mr. Brassey: There is no upper limit on what they can hold in reserve. The fund is currently "over reserved". Representative Alltus: Isn't there a rule regarding reserves and surplus? Mr. Brassey: Not as a maximum. Representative Alltus: Mr. Alcorn told me \$6 million was the figure. Mr. Brassey: The reserves are held by not owned by the State. That money is separated out for sole use and is not state funds. The intent here is not to privatize. If it were a mutual it would be owned it's not but we're trying to get close. Money held by the fund will remain the policyholders. Representative Ellsworth: I read a report from Pennsylvania. Could you please show us the new costs involved with this change and how you plan to cover it? Mr. Brassey: I'm not familiar with their program, they may have privatized. We're not going that far here. There may be changes in compensation, but there are no additional costs for administration. This would just give the fund more flexibility.

**TESTIMONY:** Woody Richards, National Assn. Independent Insurers. In support.  
Starr Kelso, Coeur d' Alene attorney. In opposition. Spoke for 24 minutes on his handout, a copy of which is included.  
Phil Barber, Counsel for AIA, In support. Rebuttal of Mr. Kelso's comments. He

supported and urged the proposed amendments. Mr. Brassey, in wrap up. He agreed with Mr. Kelso that the money is held and owned by policyholders. and that this doesn't change that ownership, or how the money is handled.

**MOTIONS:**

Representative Deal moved to send to general orders with committee amendments. Representative Deal went on to explain why he felt this is good. The insurance manager should not be a political appointment. It should be someone insurance knowledgeable.

Representative Alltus moved to hold in committee. Representative Deal was opposed to this as he reiterated the committee worked long and hard on this and these are good amendments. The dividends are the way the policyholders are given their money. Representative Newcomb: Spoke in opposition to the substitute motion and told the committee he spoke at length with Mr. Kelso who has made some valid points but this legislation is good policy.

**AMEND:**

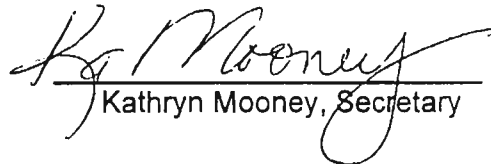
Representative Wheeler moved to hold for time certain until Tuesday, March 10, 1998. There is too much to study about this. I'm a bit confused and request more time to make a decision. Representatives Hornbeck, Ellsworth, & Henbest all concurred.

Chairman Crane called for a vote on the amended substitute motion. Motion Carried.

Meeting adjourned: 10:15 A.M.



Ron G. Crane, Chairman



Kathryn Mooney, Secretary

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| Name, Address, & Phone<br>PLEASE PRINT       | Occupation      | Representing<br>Company/Organization | Legislation<br>Interested In | Wish to<br>Testify | Pro | Con |
|--|-----------------|--------------------------------------|------------------------------|--------------------|-----|-----|
| Gerry Young 7041 Hummel Dr Boise<br>376-5635 | Transp. Planner | Self                                 | 8181                         | Yes                | X   |     |
| PHIL BARBER 344-<br>6000                     | ATTY            | AIA                                  | H 774                        | Yes                | X   |     |
| Woody Richards                               | Atty            | NAFFI                                | # 774                        | YES                | X   |     |
| John Gochen                                  | Manager         | ALMC                                 | #774                         | No                 | X   |     |
| STARR Kelso                                  | Attorney        | SELF                                 | # 774                        | Yes                |     | X   |
| MILK BRASSON                                 | ATTY            |                                      | # 774                        | NO                 | X   |     |
| Dawn Justice                                 | Lobbyist        | IACI                                 | 774                          | yes                | X   |     |
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1. In Section 1 of the Bill, a new subsection should be added which would add the following language to I.C. 72-901: Nothing in this Chapter or in Title 41, Idaho Code shall be construed to authorize the State Insurance Fund to operate as an insurer in other states.
2. In Section 1 of the Bill, additional language should also be added as a new separate subsection (4), *replacing lines 33-41, page 2*, to read as follows: The State Insurance Fund is subject to and shall comply with the provisions of the Idaho Insurance Code, Title 41, Idaho Code. For purposes of regulation the State Insurance Fund shall be deemed to be a mutual insurer, but the State Insurance Fund shall not be owned by policyholders or stockholders. The State Insurance Fund shall not be a member of the Idaho Insurance Guaranty Association.
3. At Section 4 of the Bill, page 3, beginning at line 24, to be amended to read as follows: That Section 72-911, Idaho Code, be, and the same is hereby repealed in its entirety.
4. That the emergency clause at Section 10 of the Bill be renumbered as Section 11.
5. That a new Section 10 be added to the Bill to read as follows: That Section 41-309, Idaho Code, be, and the same is hereby amended to read as follows: 41-309. GOVERNMENT-OWNED INSURERS NOT TO BE AUTHORIZED. No insurer the voting control or ownership of which is held in whole or substantial part by any government or governmental agency, or which is operated for or by any such government or agency, other than the Idaho State Insurance Fund, shall be authorized to transact insurance in this state. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of any insurer by the alien property custodian or similar official of the United States, or supervision of an insurer by public insurance supervisory authority shall not be deemed to be an ownership, control, or operation of the insurer for the purposes of this subsection.



Peter Gorman  
Associate Vice President  
and Regional Manager

332 Pine Street, Suite 310  
San Francisco, California 94104

Tel: 415/362-0870  
Fax: 415/362-0835

March 5, 1998

The Honorable W. W. "Bill" Deal  
Vice-Chair, State Affairs Committee  
Idaho House of Representatives  
State Capitol Building, Room 412  
Boise, Idaho 83720

Dear Representative Deal:

**House Bill 774**  
**Alliance Position: Support, if Amended**

I am writing to express the support of the Alliance of American Insurers for H.B. 774, if amended, to be heard in your committee on Friday, March 6, 1997. The Alliance is a national property and casualty trade association of almost 300 members, many of whom write workers' compensation.

The Alliance appreciates the opportunity you afforded our member company, Liberty Northwest, and representatives of the Idaho Association of Commerce and Industry to meet and discuss our concerns regarding H.B. 774.

The Alliance supports the agreement reached to amend the bill. We believe these amendments will assure future access to the Idaho State Fund by Idaho employers as well as a healthy insurance marketplace in the future.

With these amendments, we withdraw our previously communicated opposition to H.B. 774.

Sincerely,

Peter Gorman  
Associate Vice President and Regional Manager

Copies to: The Honorable Jim Alcorn, Insurance Commissioner  
Dawn Justice, IACI



Peter Gorman  
Associate Vice President  
and Regional Manager

332 Pine Street, Suite 310  
San Francisco, California 94104

Tel: 415/362-0870  
Fax: 415/362-0835

Date: February 27, 1998  
To: Ron Crane, Chair, House State Affairs Committee  
From: Peter Gorman, Associate Vice President and Regional Manager, Alliance  
of American Insurers  
Subject: Idaho House Bill 774 - Alliance Position: OPPOSE

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Outlined below are the reasons the insurers and employers should be opposed to this seemingly innocuous bill. The Alliance of American Insurers has seen the consequences of similar statutes passed in Oregon and Utah that have driven private competitors out of the state markets, leaving employers at the mercy of a predatory state fund.

The Alliance is a national trade association of almost 300 property and casualty insurance companies across the country, many of whom write workers compensation.

**1. H.B. 774 eliminates direct state supervision and control.**

- It creates a new Board with 4-year member terms, to select a Fund Director and set policies.
- The new Fund will be totally exempt from Insurance Commissioner regulatory authority to approve rates and punish wrongdoing.
  - Title 41, Chapter 2, Section 1 (4) says the Fund is subject only to Chapters 4, 13, 16, 18 and 49. Even though these sections may reference the Commissioner, without Chapter 2, the Commissioner is powerless to control Fund activities. This situation happened with the Oregon state fund.
- The role and authority of the Industrial Commission over the State Fund is unclear.
- The role of the State of Idaho is unclear.
  - Deficit responsibility remains, even though the bill attempts to limit liability in Section 1, Paragraph 2. Other state courts have ruled that states are liable for state fund deficits.
  - Ownership of Fund assets is shifted from the state to a quasi-public organization belonging to the policyholders, similar to Utah state fund claims.

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2 - Dawn Justice, February 27, 1998

**2. H.B. 774 Imperils guaranteed coverage to employers.**

- If the state no longer has oversight authority, the Fund can refuse to be the "provider of last resort" and refuse participation in the residual market pool.
- Severe market disruptions when high-risk employers (roofers, etc.) cannot get insurance, as when the Oregon State Fund did this.

**3. H.B. 774 could Imperil Fund solvency and create a state liability for deficits.**

- Management salaries will be increased and employees will remain in the state retirement system, thus increasing costs.
- The state will lose control over the proper use of reserves and surplus found in Title 41, Chapters 6, 7 and 8, to which the Fund will not be subject. Audits will no longer be required by the state.
- The Fund will lose its federal tax exempt status because it will no longer meet the 501(c)(6) I.R.S. test (According to the Taxpayer Relief Act of 1997, Sec. 963, assets must clearly revert to the state upon dissolution in order to maintain tax exempt status). Surplus earned will be taxed at corporate tax rates.
- The combination of these events could create new financial pressures.

**4. H.B. 774 allows the state to unfairly compete with private industry.**

- The State Fund currently has 53 percent of the workers' compensation market by premium volume. When it was established, the Fund was granted certain tax advantages in return for being the "provider of last resort" to Idaho employers. This mission has since been diluted with the establishment of an "assigned risk pool," where losses are shared with private insurers.
  - 42 percent of earned premium was dividend back in 1996.
  - 15 percent rate reduction was given to all policyholders in 1997.
- Private industry already has a hard time competing with these advantages.

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- This will allow the Fund to continue to receive those advantages while avoiding any liability.
  - H.B. 774 directs the Fund to directly compete with private insurers. Section 1 (3) states the Board shall run the state insurance fund as an "efficient insurance company."
  - The Fund does not have to bear the considerable extra costs of a certificate or of regulatory compliance imposed by the state (approval of rates, claims audits, financial audits) that are borne by private industry.
  - With its 53 percent market share, the Fund will have an unfair market advantage over all private insurers.

**5. There is no need or justification for changing the Fund's organizational status.**

- The State Fund is financially strong and has achieved its status under present management and organization.
  - Surplus doubled from \$78 million in 1994 to \$150 million in 1996.
  - The average rate of return of 20 percent on surplus in the last three years is better than the private industry average.
- The market is very healthy with at least 25 national carriers competing for business. Many other insurance carriers want to enter the Idaho market, as the California market is now unprofitable.
- If passed, H.B. 774 will start the Fund on a path to maximize financial return, even if that means moving Idaho earned capital to other states (as the Utah State Fund has done). The Fund's Board will have a fiduciary responsibility to seek the highest return, even if that is outside Idaho.
- If H.B. 774 passes, the state will lose its authority and control to turn the Fund in the future to protect employers and injured employees.

4 - Dawn Justice, February 27, 1998

**6. If the State wishes to eliminate the original reason for the State Fund, then it should be liquidated.**

- The original reason for the Fund was for it to be "provider of last resort," where private insurance was unavailable to employers.
- There is no reason to allow the State Fund to compete directly with private industry unless it serves this special need.
- As an alternative, the state could sell off the assets of the Fund to private insurers and leave the current NCCI-run residual pool in place to be shared by private insurers.

PG:wja  
022798dj

Copies to House State Affairs Committee members

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**STARR KELSO**  
**PERSONAL BACKGROUND**

**BORN/RAISED:** Wallace, Idaho  
**RESIDENCE:** Cocur d'Alene, Idaho

**EDUCATION:** North Idaho College  
University of Idaho  
Gonzaga Law School (1979)

**REAL JOBS:** Mine Mill Operator (Galena)  
Hard Rock Gypo Miner (Galena)  
Hot Tar Roofer  
Brush Crew/Fire Fighter Foreman  
High School Teacher/Coach  
Marine Deputy Sheriff

**PRACTICE OF LAW 1979 - PRESENT**

**LICENSED:** Idaho (1979)  
9th Circuit (1983)  
Montana (1989)  
Colorado (1992)  
10th Circuit (1993)  
U.S. Supreme Court (1993)

**PRIMARY AREA OF PRACTICE:** Worker's Compensation  
Employment Law

**WORKERS COMPENSATION ORGANIZATIONS/PRESENTATIONS**

**ORGANIZATIONS:** Co-Founder - Idaho State Bar Worker's Compensation Section  
Co-Founder - North Idaho Employers Group (1993)  
IACI Blue Ribbon Worker's Compensation Committce (1995)

**PRESENTATIONS:** Bad Faith In Worker's Comp, Industrial Commission Conference (1988)  
Panels-Who Are These Guys, Industrial Commission Conference (1989)  
SIF, Idaho Association of Commerce & Industry (1989)  
Safety, Its Everyone's (Legal) Responsibility, 52nd Intermountain Logging Conference (1990)  
The State of Idaho's Worker's Compensation System Today: Its Not All Good News, Employers' Conference on Workers' Compensation (1991)  
Current Regional Legislation & Litigation, Human Resources Association Of Treasure Valley, Boise (1994)  
Worker's Compensation Issues, TPM Safety Conference (1994)

North Idaho Employers' Group -Organized & Sponsored first three annual Workers' Compensation Conferences (1993, 1994 & 1995)

Speaker at the *6th Annual Conference On Workers' Compensation*, May 21, 1998 (See Brochure E-1)

**RECENT SIGNIFICANT WORKERS' COMP CASES:**

1. *Lines v. Idaho Forest Industries*
2. *Edwards v. Industrial Commission/SIF* (\$28 million) (E-2)
3. *Kelso & Irwin v. SIF* (Policyholders Own Surplus) (E-8)



## OUTLINE

### I. General

- a. Resume
- b. 1997 Senate Bill (Not require SIF to pay Treasurer)
- c. Lydia Justice Edwards - telephone call
- d. "5 minutes"

### II. Emergency/Immediately

- a. No notice to policyholders of "emergency"
- b. Quarterly Newsletter, Winter 1997 (E-3)
- c. Why important for policyholders (Idaho businesses) to know of emergency
  1. 1st Annual Report - Policyholders own reserves and surplus (E-4)
  2. Legislative Committee (11-1-50) Report (E-5)
  2. *Starting A Business In Idaho* (E-6)
  3. Attorney General letter to Representative Alltus (11-03-97) - Policyholders have "no" ownership in SIF Surplus (E-7)
  4. Judge Kosonen's opinion (12-18-97) (E-8)

### III. Problems With HB774

- a. Idaho Code §72-901 (proposed) "Independent public body politic and corporate"
- b. Know what SIF is today?
- c. Know what an independent public body politic and corporate is?
- d. What is Idaho Health Facility Authority? (P. 597-98)
- e. Supreme Court case
  1. *Board of County Commissioners of Twin Falls v. Idaho Health Facilities Authority* (E-9)

### IV. Board/New Level of Bureaucracy (proposed)

- a. Add five (5) person board - pay plus costs
- b. How does Governor/Legislature get rid of any directors
- c. Current "board": 1996 Annual Report - Governor, Attorney General, State Board of Examiners, Secretary of State, Controller - Why Change (E-10)

**V. Board Members Liability (proposed)**

- a. Personal liability
- b. Idaho Code §72-907 (current) Exempts manager (E-11)
- c. No provision for board for board exception

**VI. Board Authority vs. Manager vs. Endowment Fund vs. Board of Examiners - Conflict**

- a. Idaho Code §72-901 (proposed) - Board can "exercise any power"
- b. Idaho Code §72-903 (current) - Manager has full power (E-12)
- c. Idaho Code §72-912(a) (current) - Endowment Fund Investment Board  
Power to invest (no proposed change) (E-13)
- d. Idaho Code §72-927 (current) - submits claim disbursements to Board of  
Examiners (E-14)

**VII. Board To Assure Its Run As An "Efficient Insurance Company"**

- a. 2nd SIF Annual Report (1920) (E-15)
- b. Idaho Code §72-902 (proposed) - Deletes Manager's right to acquire real  
property
- c. Does not do that - it expands power because Manager can "do  
any and all things"/no limitations

**VIII. Idaho Code §72-911 (proposed) Surplus Reserve**

- a. Idaho Code §72-911 (current) (E-16)
- b. \$6 million needed now (see auditors 1996 report) (E-17, 17.1, 17.2)
- c. If need \$6 million how can proposed \$2 million be enough (IC§41-313) (E-18)



Comments  
from 5th Annual Employer's  
Conference Attendees:

# EMPLOYERS' CONFERENCE ON WORKERS' COMPENSATION

6th Annual

The Coeur d'Alene Resort  
Thursday, May 21, 1998  
7:30 a.m. - 4:30 p.m.

"This conference gets better and better every year! Well done." CEO

"A day well spent! All of the speakers were great." Timber Executive

"I'll make a point to go to this every year! It's so informative." Senior Executive

"If you're going to attend only one conference this year, I recommend this one!" Union Official

"A wealth of information and insights." City Administrator

- ARESCO, Inc.
- Century Publishing Company
- Coldwater Creek
- Empire Airlines
- Empers
- Hecla Mining Company
- Humanix Personnel Services
- Idaho Veneer Company
- Jacklin Seed Company
- Kootenai Medical Center
- Liberty Northwest
- Missiana-Pacific Corporation
- North Idaho Immediate Care
- Plastic Model Engineering, Inc.
- Sawerwood Theme Park
- Shine Precious Metals, Inc.

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E-11

# NORTH IDAHO EMPLOYERS' GROUP, INC.

P.O. Box 2225  
Post Falls, Idaho 83877

*To become more informed on Idaho Worker's Compensation Issues.  
To make that information available to North Idaho Employers.  
To work for improvements within the Worker's Compensation System.*

## PROGRAM

- 7:30 - 8:00 Registration & Continental Breakfast
- 8:00 - 8:15 Welcome Address, Larry Jeffries, Sunshine Precious Metals, Inc.
- 8:15 - 8:45 Keynote Address, Philip E. Batt, Governor of the State of Idaho
- 8:45 - 9:45 Industrial Commission Updates, Rachel Gilbert, Idaho Industrial Commission; James F. Kile, Idaho Industrial Commission
- 9:45 - 10:00 Morning Break
- 10:00 - 11:00 Trick or Treat: Being Able To Tell The Difference Will Save you Money, Starr Kelso, Starr Kelso Law Office Chartered, Coeur d'Alene, Idaho
- 11:00 - 12:00 Do's and Don'ts for Employers - RE: WC/ADA/FMLA Interaction, Bobbi Dominick, Elam & Burke, P.A., Boise
- 12:00 - 1:00 Lunch (provided)
- 1:00 - 1:30 Legislative Updates, Dawn Bushman, Idaho Association of Commerce and Industry
- 1:30 - 2:30 Preventative Steps for Repetitive Motion and Back Injuries, Virginia Taft, Coeur d'Alene Hand Therapy; Paula Taylor, Kootenai Medical Center
- 2:30 - 3:15 OSHA Investigations - Employers Perspective and Panel Discussion, Ed Wilson - Moderator. Brookes Spencer, K.C. Hansen, Virgil Howell - Panelists
- 3:15 - 3:30 Afternoon Break
- 3:30 - 4:15 Slaying the Burnout Dragon; Issues of Work Related Stress Francie Miller, North Idaho Critical Incident Stress Management Team
- 4:15 - 4:30 Closing Remarks, Larry Jeffries, Sunshine Precious Metals, Inc.

## SPEAKERS

**Philip E. Batt** - PHILIP E. BATT, TWENTY-NINTH GOVERNOR OF THE STATE OF IDAHO. Governor Batt was first elected to the Idaho State Legislature in 1965. He previously served two years in the Idaho House of Representatives, fourteen years in the Idaho State Senate and four years as Lt. Governor.

**Larry Jeffries** - LARRY IS THE HUMAN RESOURCE DIRECTOR FOR SUNSHINE PRECIOUS METALS, INC. His responsibilities include labor relations, benefits administration, workers' compensation, safety and compensation. In addition to Sunshine Mining, Larry's management experience includes governmental agencies and other mining companies.

**Starr Kelso** - STARR KELSO GRADUATED CUM LAUDE FROM GONZAGA UNIVERSITY LAW SCHOOL AND CURRENTLY OWNS THE STARR KELSO LAW OFFICE IN COEUR D'ALENE. He was a founding director of the Idaho State Bar Association's Workers Compensation Section. His practice for the past fifteen years has focused on employment and workers compensation law. Mr. Kelso is recognized for his advocacy of employer interests. Most recently, his work led to the filing of Edwards v Idaho State Industrial Commission/SIF wherein the Idaho Supreme Court ordered the Industrial Commission to comply with the law and require the State Insurance Fund to pay over \$28 million to State Treasurer Edwards for the protection of employers and injured workers.

**Rachel S. Gilbert** - RACHEL S. GILBERT IS SERVING A SIX YEAR TERM AS THE EMPLOYER REPRESENTATIVE ON THE IDAHO INDUSTRIAL COMMISSION. She was appointed by Governor Philip E. Batt in January 1995. Commissioner Gilbert received her B.S. Degree from the University of Nebraska and her M.A. degree from the College of Idaho. In May, Commissioner Gilbert was elected Vice President of the Western Association of Workers' Compensation Boards comprised of eighteen western states. She will chair the western conference convention in Coeur d'Alene on July 9 -12, 2000.

**James P. Kile** - JAMES P. KILE IS A 1973 GRADUATE OF THE UNIVERSITY OF IDAHO LAW

as well as serving with the Idaho Attorney General's Office where he handled criminal prosecutions and appeals to the Idaho Supreme Court. James has 15 years experience with the J.R. Simplot Company where he represented all aspects of their legal department with special emphasis in labor and employment law. In January 1997, Mr. Kile assumed his new position as the attorney representative on the Idaho Industrial Commission.

**Dawn Bushman** - DAWN BUSHMAN IS THE HUMAN RESOURCE DIRECTOR FOR IDAHO ASSOCIATION OF COMMERCE AND INDUSTRY (IACT). Her experience includes over 15 years in human resource management in the hotel industry of Texas, California and Singapore. Dawn holds a Master's degree in Public Administration and has a solid background of experience and knowledge in governmental affairs, most recently with the President's Office at Boise State University. Active during the 1998 legislative session, Dawn focused on worker's compensation, unemployment insurance, employer-sponsored health care benefits and education issues.

**Bobbi Dominick** - BOBBI DOMINICK IS A SHAREHOLDER IN THE LAW FIRM OF ELAM & BURKE, P.A. She practices in the areas of wrongful discharge and discrimination law, employer/employee relations law and appellate law. She was admitted to the Idaho and U.S. District Court, District of Idaho in 1982; To the U.S. Court of Appeals, Ninth Circuit in 1984 and to the U.S. Supreme Court in 1986. She received a B.A. degree cum laude from Boise State University and J.D. degree cum laude from the University of Idaho in 1982.

**Virginia Taft** - VIRGINIA TAFT IS AN OCCUPATIONAL THERAPIST AND OWNER OF COEUR D'ALENE HAND THERAPY. She has been in private practice in North Idaho for the past 20 years and currently employs a staff of eight including physical, occupational and massage therapists. Programs provided include hand rehabilitation, ergonomics and pain management. Virginia has worked extensively with hand and upper body injuries and specializes in ergonomics and myofascial release techniques. She has worked extensively with the Idaho Industrial Commission to coordinate work return, assist in work modification and facilitate accommodations.

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IN THE SUPREME COURT OF THE STATE OF IDAHO  
Docket No. 23518

IN THE MATTER OF THE PETITION )  
FOR WRIT OF MANDAMUS AND )  
ALTERNATIVE WRIT OF MANDAMUS TO )  
THE INDUSTRIAL COMMISSION AND )  
DREW S. FORNEY, MANAGER OF THE )  
STATE INSURANCE FUND. )

LYDIA JUSTICE EDWARDS, in her )  
official capacity as Treasurer of )  
the State of Idaho, )

Petitioner, )

v. )

INDUSTRIAL COMMISSION OF THE )  
STATE OF IDAHO and DREW S. FORNEY, )  
in his official capacity as Manager )  
of the State Insurance Fund, )

Respondents. )

Boise, April 1997 Term

1997 Opinion No. 93

Filed: July 25, 1997

Frederick C. Lyon, Clerk

This is an original jurisdiction proceeding on a petition for writ of mandamus.

The petition for writ of mandamus is granted.

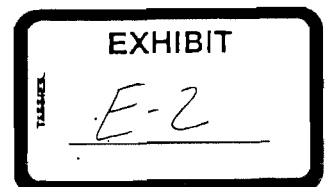
Jim Jones & Associates, Boise, for petitioner. Jim Jones argued.

Hon. Alan G. Lance, Attorney General; A. Rene Martin, Deputy Attorney General,  
Boise, for respondent Industrial Commission of the State of Idaho. A. Rene Martin  
argued.

Hon. Alan G. Lance, Attorney General; Brett T. DeLange, Deputy Attorney General,  
Boise, for respondent Drew S. Forney. Brett T. DeLange argued.

SILAK, Justice

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The Treasurer of the State of Idaho filed a petition for writ of mandamus requesting the Supreme Court to order the Industrial Commission to require the State Insurance Fund to make a security deposit with the Treasurer pursuant to Idaho Code Section 72-301(2). We hereby grant the petition.

I.

**FACTS AND PROCEDURAL BACKGROUND**

In July 1996, the law firm of Kelso & Irwin, P.A., filed a petition for declaratory ruling with the Industrial Commission (Commission) seeking a determination that I.C. § 72-301 applies to the State Insurance Fund (SIF). I.C. § 72-301(2) provides that the Commission shall require workmen's compensation sureties to deposit with the Treasurer of the State of Idaho an amount equal to the total amounts of all outstanding and unpaid compensation awards against the surety. Kelso & Irwin argued that since the SIF is a surety pursuant to I.C. § 72-102(28)(Supp. 1997)<sup>1</sup>, the SIF is required to make the above deposit required by I.C. § 72-301(2). The SIF argued that the Idaho Legislature has directed the SIF, pursuant to I.C. § 72-911, to maintain surplus and reserve funds that are sufficiently large to cover the catastrophic hazard and all other unanticipated losses and to meet anticipated losses and carry all claims and policies to maturity. The SIF further argued that pursuant to I.C. § 72-912, the Endowment Fund Investment Board (the Board) is required to invest the surplus and reserve funds belonging to the SIF. The SIF thus claimed that compliance with I.C. § 72-912 provides greater protection to its claimants and insureds than that afforded to other sureties' insureds under I.C. § 72-301, and that therefore, to the extent there is a conflict between I.C. § 72-301 and I.C. § 72-912, the latter controls.

The Commission issued its ruling on the petition on August 20, 1996, declining to provide the relief requested by Kelso & Irwin. The Commission found that Kelso & Irwin had failed to establish that an actual or justiciable controversy existed. The Commission based its decision on the finding that Kelso & Irwin failed to show that it would be directly affected by the posting of the

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<sup>1</sup> I.C. § 72-102(28)(Supp. 1997) was formerly codified as I.C. § 72-102(25).

security. Kelso & Irwin thereafter filed an appeal with this Court, which has been stayed pending the outcome of this original proceeding.

On October 4, 1996, the petitioner in the present case, State Treasurer Lydia Justice Edwards (Edwards) was advised by the Idaho Attorney General of the pending litigation in *Kelso & Irwin v. State Ins. Fund*. Edwards concluded that the SIF is required to make the security deposit as set forth in I.C. § 72-301(2) and that the SIF had never done so. Edwards then wrote to both the SIF and the Commission requesting that the deposit immediately be made. The SIF, responding through the Attorney General's office, stated that it could not comply with Edwards' request without violating I.C. § 72-912. Edwards renewed her request by letter dated November 20, 1996, stating that the two statutes could be reconciled, but the SIF again declined to make the deposit. The Commission never responded to either letter.

Edwards considered intervening in the *Kelso* appeal, but decided that this course of action would not provide a speedy resolution to these issues. Edwards concluded that since the issue pending in the *Kelso* appeal was whether a justiciable controversy exists between Kelso and the SIF, a ruling in that case may not address the merits. Edwards also believed that the Commission would be reluctant to entertain a new petition brought by her while the *Kelso* appeal is pending. Edwards further believed that even if the Court were to issue a ruling on the merits in the *Kelso* appeal, it was not clear an order would be issued mandating the Commission to require the SIF to place a deposit with Edwards. Thus, on January 7, 1997, Edwards filed this original jurisdiction proceeding against the Commission and Drew S. Forney (Forney), in his official capacity as Manager of the SIF (collectively the Respondents), seeking a writ of mandamus.

As of December 31, 1996, the market value of the SIF's portfolio that the Board holds for the SIF pursuant to I.C. § 72-912, was \$386,019,710.08. As of December 31, 1996, the SIF's Incurred Loss Reserve was \$131,205,000 and its surplus was \$150,360,192.17. The total amount of all outstanding and unpaid compensation awards against the SIF, as of December 31, 1996, was \$25,549,641.88.

## II.

### ISSUES PRESENTED

Edwards states the issues as follows:



1. Whether mandamus is an available remedy for Edwards in this matter.
2. Whether the Commission must require the SIF to make a deposit with the Treasurer under I.C. § 72-301(2) and whether the SIF must make such deposit.

The Commission states the issue as follows:

1. Whether an adequate remedy at law exists by which the Treasurer may address the issues raised by her petition, preventing the Supreme Court's issuance of a writ of mandamus or other alternative writ.

The SIF states the issue as follows:

1. Whether Edwards has statutory authority to bring her petition.

### III.

#### ANALYSIS

##### A. A Writ Of Mandamus Is The Appropriate Remedy In This Case.

Article V, § 9 of the Idaho Constitution and Idaho Code Section 1-203 confer on the Supreme Court original jurisdiction to issue writs of mandamus. Such a writ may be issued "to compel the performance of an act which the law especially enjoins as a duty resulting from an office . . ." I.C. § 7-302. This Court has held that mandamus is the proper remedy for one seeking to require a public officer to carry out a clearly mandated ministerial act which is not discretionary. *Cowles Publ'g Co. v. Magistrate Court*, 118 Idaho 753, 760, 800 P.2d 640, 647 (1990). However, the existence of an adequate remedy in the ordinary course of law, either legal or equitable in nature, will prevent the issuance of a writ of mandamus. *Idaho Falls Redev. Agency v. Countryman*, 118 Idaho 43, 44, 794 P.2d 632, 633 (1990). The party seeking the writ of mandamus has the burden of proving the absence of an adequate, plain, or speedy remedy in the ordinary course of law. *Id.*

In the present case, the Respondents argue that the mandamus action is inappropriate here because Edwards had an adequate remedy at law, reasoning that I.C. § 72-301 grants the Commission the authority to enforce that section's provision, and that in instances of an actual controversy, a party with a proper interest may seek a declaratory ruling from the Commission. Specifically, the Respondents rely on Rule XV of the Commission's Judicial Rules of Practice and Procedure which provides that a petitioner may seek a declaratory judgment from the Commission

"whenever [a person has] an actual controversy over the construction, validity or applicability of a statute, rule, regulation or order pertaining to any matter within the Idaho Industrial Commission's jurisdiction . . . ." Rule XV(f) provides that the Commission may issue a written ruling which shall have the force and effect of a final order or judgment or decline to make a ruling. The Respondents thus argue that Edwards should have proceeded in this manner, and that if the Commission issued a ruling against her she could have then appealed directly to this Court. This, the Respondents claim, provided Edwards with an adequate remedy at law for addressing the issues in her petition.

The Respondents' argument must fail for two reasons. First, it would have been futile for Edwards to have filed a declaratory judgment action before the Commission. On October 22, 1996, Edwards wrote to the Commission and the SIF requesting the Commission to require the SIF to deposit with her an amount equal to the total amounts of all outstanding and unpaid compensation awards against the SIF pursuant to I.C. § 72-301(2). Brett DeLange of the Attorney General's office responded to Edwards' letter, apparently only on behalf of the SIF, and stated that the SIF could not comply with Edwards' request without violating I.C. § 72-912. Edwards again wrote to the SIF and the Commission enclosing a legal evaluation by attorney Jim Jones, which concluded that the two statutes in question, I.C. § 72-301 and § 72-912, could be reconciled. Brett DeLange responded to Mr. Jones, again solely on behalf of the SIF, stating that the SIF declined to make the requested deposit. The Commission never responded to Edwards and never demanded that the SIF make the deposit with Edwards. Thus, the only reasonable conclusion is that the Commission either did not believe it had the authority to require the SIF to make the deposit or it believed that the SIF was not required to make the deposit. Either way, Edwards had good reason to believe that filing a declaratory judgment action before the Commission would have been futile.

Second, and more importantly, the Commission could not provide a suitable forum in which to impartially interpret the statutes in question since Edwards is asking the Commission to interpret and enforce a statute against itself. I.C. § 72-301(2) provides, in pertinent part:

To the end that the workmen secured under this act shall be adequately protected, *the commission shall require* such sureties to deposit and maintain with the treasurer of the state money or bonds of the United States or of this state . . . in an amount equal to the total amounts of all outstanding and unpaid compensation awards against such surety.

(Emphasis added). Requesting the Commission to issue a declaratory ruling interpreting a statute which requires the Commission itself to take certain action raises serious due process questions. A petition for writ of mandamus was therefore the proper course of action for Edwards to take under the circumstances of this case.

**B. The Commission Must Require The SIF To Deposit With Edwards The Current Total Amount Of All Outstanding And Unpaid Compensation Awards Against The SIF, And The SIF Must Make Such Deposit.**

The statutes at issue in this case, which the Respondents claim are in conflict, are I.C. § 72-301(2) and I.C. § 72-912. As stated above, I.C. § 72-301(2) directs the Commission to require all workmen's compensation sureties in this state to deposit with the treasurer "an amount equal to the total amounts of all outstanding and unpaid compensation awards against such surety." "Surety" is defined under Title 72, Idaho Code, as "any insurer authorized to insure or guarantee payment of worker's compensation liability of employers in any state; *it also includes the state insurance fund, a self insurer and an inter-insurance exchange.*" I.C. § 72-102(28). (Emphasis added.) Thus, the SIF is clearly included in "sureties" under I.C. § 72-301(2). The Code further provides that the monies deposited with the Treasurer shall be held in an express trust for the benefit of the employees of the employers whose compensation liability has been determined. I.C. § 72-302.

The SIF contends it is exempt from the responsibility of making such a deposit based upon the provisions of I.C. § 72-912 which provides, in pertinent part:

**Investment of surplus or reserve.**—The endowment fund investment board shall at the direction of the manager invest any of the surplus or reserve funds belonging to the state insurance fund in real estate and the same securities and investments authorized for investments by insurance companies in Idaho as shall be approved by the manager. The endowment fund investment board shall be the custodian of all such securities or evidences of indebtedness, provided that the endowment fund investment board may employ a custodial bank to hold such securities.

The SIF contends that it cannot comply with I.C. § 72-301(2) without violating the provisions of I.C. § 72-912. Pursuant to the rules of statutory construction, the SIF argues, I.C. § 72-912 is the more specific statute and is therefore controlling.

In addition, the SIF argues that it provides greater protection for its insureds and claimants than that which is required of other sureties because these "surplus or reserve funds" include the

amount required to be deposited under I.C. § 72-301(2), *i.e.*, the outstanding and unpaid compensation awards or known losses. With respect to the above "surplus," I.C. § 72-911 provides that 10% of the premiums collected from employers shall be set aside to create a surplus large enough to "cover the catastrophe hazard and all other unanticipated losses." I.C. § 72-911 also provides that the SIF is to maintain a "reserve" adequate enough "to meet anticipated losses and carry all claims and policies to maturity." Thus, the SIF argues that the legislature intended for the Board to be the custodian for all of the SIF's securities acquired to cover all of its losses, and therefore cannot deposit any security with Edwards without violating I.C. § 72-912.

With respect to the rules of statutory construction, this Court has held that when two statutes relate to the same subject, even though they are in apparent conflict, they are to be construed harmoniously if at all possible. In a recent case, the Court held:

[I]t is axiomatic that this Court must assume that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed in accord with the legislative policy embodied in those prior statutes. Therefore, statutes relating to the same subject, although in apparent conflict, are construed to be in harmony if reasonably possible.

*Cox v. Mueller*, 125 Idaho 734, 736, 874 P.2d 545, 547 (1994) (citations omitted). We hold that I.C. § 72-301(2) and § 72-912 can be reconciled harmoniously.

The definitions of "surplus" and "reserves", as those terms relate to the SIF, are found in I.C. § 72-911. "Surplus" is a percentage of insurance premiums set aside to cover catastrophes and other *unanticipated* losses. An outstanding and unpaid compensation award cannot qualify as an unanticipated loss since it is a known and quantifiable amount. A "reserve" fund under I.C. § 72-911 is to "meet anticipated losses and carry all claims and policies to maturity." Anticipated loss here means a loss anticipated or expected in the future that is currently not known. This is not the same as an existing, known loss or award for which the deposit is required under I.C. § 72-301(2). Thus, we hold that the legislature did not intend for "surplus and reserves", as those terms are defined in Chapter 9, Title 72, Idaho Code, to include amounts for all outstanding and unpaid compensation awards.

I.C. § 72-910 further supports a construction that monies representing all outstanding and unpaid compensation awards should be deposited with the treasurer. That section provides, in pertinent part:

**State treasurer custodian of fund.**--The state treasurer shall be the custodian of the state insurance fund, and all disbursements therefrom shall be paid by him upon warrants signed by the state controller or upon sight drafts signed by the state insurance manager as provided by section 72-927, Idaho Code.

This section indicates that it is the treasurer who is to make any and all payments. In view of this requirement, we believe that the legislature intended for the treasurer to be the keeper of the monies from which the outstanding and unpaid workers' compensation awards are to be paid. Otherwise, the above-quoted sentence from I.C. § 72-910 would have no meaning.

Another reason that I.C. § 72-301(2) and § 72-912 can be reconciled (*i.e.*, that the outstanding compensation awards are not included in I.C. § 72-912) is related to the provision in I.C. § 72-912 which states that the Board shall, when so directed by the manager of the SIF, invest the surplus and reserve funds in real estate. The investment in such a long-term unliquidated asset like real estate would certainly seem ideal for unanticipated, future forward-looking losses as well as even for catastrophic, anticipated losses since such an investment would likely yield a high rate of return in the long run. However, such an investment would not be appropriate for an existing, known loss such as an outstanding and unpaid compensation award since such an award is presumably to be paid in the near future.

We therefore hold that I.C. § 72-302(2) and § 72-912 can be construed in harmony. I.C. § 72-301(2) does apply to the SIF, and pursuant to that section, the Commission is hereby directed to require the SIF to deposit with Edwards an amount which is currently equal to the amount of all outstanding and unpaid compensation awards which monies will be disbursed by Edwards pursuant to I.C. § 72-910 in due course. We further hold that Forney, as manager of the SIF, may direct the Board to invest the remaining surplus and reserve funds pursuant to I.C. § 72-912.

#### IV.

#### CONCLUSION

For the reasons stated above, the petition for writ of mandamus is granted and a writ shall forthwith issue.

# compUpdate

Idaho State Insurance Fund

## Workers comp costs continue to drop

Overall rate falls; Fund offers across-the-board cut, record dividend

Good news comes in threes:

The overall workers compensation premium rate will decline in 1998; the State Insurance Fund has won approval for another across-the-board rate reduction; and the Fund's dividend will be substantially larger than anticipated.

The Fund's policyholders and their employees can share a lot of the credit for the continued lowering cost of workers compensation insurance. Paying attention to workplace safety is resulting in fewer accidents and that is translating into less money being spent on medical bills and time-loss benefits.

Idaho is a leader in a national trend in safety consciousness that is reducing workers compensation costs, and the payoff is that some Fund policyholders have seen their comp costs cut nearly in half in the past four years.

### \$61.5 million dividend

The Fund's 1998 dividend release will be about \$6.5 million more than anticipated earlier this year. Instead of \$55 million, the Fund will issue \$61.5 million to eligible policyholders.

The total dividend amounts to about 47 percent of premium collected during the dividend period. To be eligible, a policyholder must have been insured for six months and have a policy effective date between July 1, 1995, and June 30, 1996.

Policyholders can expect their dividends to range from zero to about 70 percent of premium paid, depending on the policyholder's premium size and loss experience.

Dividend checks will be mailed a couple of weeks later than normal, however. Eligible policyholders can expect to receive their check in late January.

### Overall rate down 10%; Fund cuts all rates 15%

Governor Phil Batt has announced that the overall workers compensation insurance premium rate for 1998 will drop 10

percent. The decline is the fourth rate reduction in a row. Since 1994, the overall rate has fallen 29.3 percent, making Idaho's workers compensation rates among the lowest in the West.

Also, for the second year in a row, the Fund has won approval from the Department of Insurance for a 15 percent across-the-board rate reduction for its policyholders. The lower rates will apply to all new policies and to existing policies when they are renewed.

Bob Creighton, the Fund's Underwriting Bureau Chief,

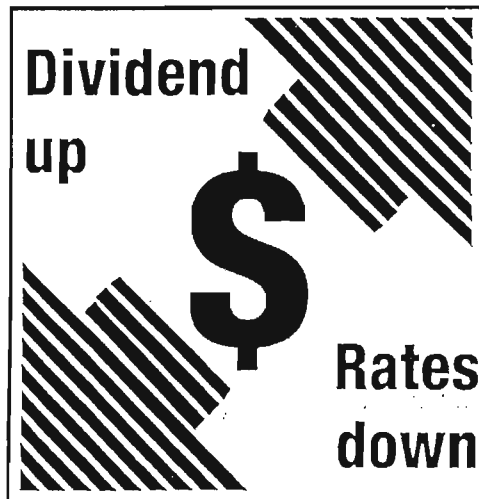
cautioned policyholders not to expect to see their premiums drop exactly 25 percent because of the 10 percent overall decrease and the Fund's 15 percent reduction.

"The actual premium cost will vary for individual policyholders because of the rate classification system," Creighton explained.

Rates are set for more than 600 classification codes for various types of employment. The 10 percent figure is an overall average decrease. Rates for some classifications may have increased for 1998, while others may have decreased.

"We're very pleased to offer this upfront 15 percent reduction in premium rates," Creighton said. "With our dividend program, we've essentially collected money upfront in the form of premiums and then returned a substantial amount later in the form of dividends because we were successful financially. We realize many businesses would rather have their upfront costs trimmed and use the money for other purposes, rather than wait for us to return it to them."

Creighton pointed out, however, that a 15 percent across-the-board cut could mean a reduced dividend in the future. "Fortunately, the Fund's financial strength allowed a reduction in 1997 and 1998 and a healthy dividend return for 1998," Creighton said.



EXHIBIT

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17 pages

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STATE OF IDAHO

First Annual Report

OF THE

State Insurance Fund

Workmen's Compensation Act

For the Period Ending  
October 31, 1918

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*C.O. Broxon*

STATE INSURANCE MANAGER

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SURPLUS AND RESERVES BELONG TO  
EMPLOYERS

It must not be forgotten that the question of reserves, as well as that of surplus, enters into this matter, but here again, advantage is on the side of the State Fund for the reason that all surplus and permanent reserves, other than those set aside to mature claims, and even this will be increased by provisions that are bound to occur, belong to the employers and are held for their benefit or are distributed to them as dividends, which is not true in the case of the casualty companies. During the first ten months of the operation of the Fund, it has been seen that there has been accumulated a net surplus of \$1,279.66 premium over all losses (profits) amounting to \$12,279.66, while the statutory surplus fund (the catastrophe reserve) amounts to \$22,902.01 more. This likewise belongs to the employers for the reason that no catastrophe has occurred and therefore there is no liability existing against this fund, which will always be protected by our re-insurance contract as set forth in the actuary's report. Thus, in addition to the lower rates charged, the Fund has been able to save for the benefit of insured employers \$33,181.67, or nearly 15 per cent of the amount collected from them, and which could be distributed to them except that the law and good insurance principles require that it be left in the Fund for their greater protection.

*Penalties.*—In the assessment of penalties for failure or refusal to comply with the law on the part of employers, an extremely temperate course was adopted. It was felt that the new law is a new one and establishes a system which many people might have regarded as an extremely radical one, therefore, leniency rather than harshness should rule. The principle pursued was to make each delinquent employer pay merely the cost of the effort of the department to induce him to come under the law. The expense of the law's enforcement is an expense of the Fund and is, therefore, paid by those employers who have complied with the law by insuring in the State Fund. It seemed unfair to those who obeyed the law to make them bear any of the expense of bringing in the delinquent employers, so that wherever it became necessary to create an expense in enforcing the law, the delinquent employer was assessed sufficient penalty to reimburse the Fund for the expense incurred.

Only one suit was brought against an employer to enjoin him from conducting his business. This employer quickly

sought settlement of the case which he was permitted to make by payment of all costs and a small amount in addition thereto, the total amounting to \$75.00. In the case of a few employers whose employees had suffered accident and for whose care provision had not been made until after complaint had been made to this office by such injured employee, a somewhat heavier penalty was inflicted. The total penalties collected amount to \$451.67 from 61 employers. The expense of collection was charged to the administrative expense, while the amount collected was paid into the Fund.

*Interest.*—The total amount of interest collected and earned to October 31, 1918, amounts to \$4,603.21. It is worthy of note, in this connection, that the Funds have been so handled that the interest earnings have paid the State Insurance Manager's salary during the ten months' period, and have left a balance of \$1,269.88. The permanent investments already made for the Fund, together with daily interest earnings upon deposits, should, during the year, pay considerably more than one-half the entire expense of administration of the Fund, thus to that extent lessening the burden upon the employers.

It is my belief that if all employers in the State should insure with the State Fund the interest earnings alone upon money necessary to be collected but held pending requirement for expenditure, would more than pay the entire cost of administering the Fund.

## PERMANENT INVESTMENTS

Care has been taken to keep invested all surplus funds belonging to the State Insurance Fund. A list of the investments already made is furnished herewith. All bonds and mortgages are deposited with the State Treasurer, who is charged with the duty of collecting the interest and principal when due and turning the same into the Fund.

In this connection I desire to call attention to the possibility offered for the future by the Fund. The State Insurance Manager has adopted the policy of investing the moneys of the Fund in no other security than those offered by the people of the State of Idaho. The only exception to this rule has been the investment in Liberty Bonds of the United States government, which it was regarded as a patriotic duty to purchase during the period of the war. These purchases, however, went to the credit of the quota of the state and in that respect lessened the burden of the people of Idaho just to that extent

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State of Idaho

Report of  
**Legislative Interim Committee**  
on  
**Workmen's Compensation Laws**

November 1, 1950

PROPERTY OF THE LEGISLATIVE COUNCIL  
BOISE, IDAHO

EXHIBIT

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STATE INSURANCE FUND

(Title 72, Chapter 9, Idaho Code)

Misnomer

The designation, State Insurance Fund, is unfortunate being both inaccurate and confusing. The general term "insurance" results in confusion of identity with the Department of Insurance. The term "state funds" causes most people to believe that it is a governmental fund owned by the state. Not a few legislators still think so. It is a trust fund administered by the state. It is proprietary, not governmental. The terms "funds" properly applies only to the cash in the hands of the State Treasurer and other tangible assets in which it is invested. The term has become the designation of the agency which administers the fund. It would be much better if the fund (in the Treasury) were designated as the "Workmen's Compensation Trust Fund." We shall adhere in this report to the customary statutory and popular designation.

Monopoly? Abrogation?

When the workmen's compensation law was enacted in 1917, the most bitterly contested issue was whether or not the State Insurance Fund should be established as an exclusive monopoly. A compromise was then effected by which the Fund was made a public mutual, with preferential monopolistic coverage of all public employment, and as to private employment a competing carrier. Self-Insurance was recognized, under administrative regulation. Private carriers were recognized, not as casualty carriers, but as sureties, who in the subsequent language of the Supreme Court are legally liable as "co-employers." *Smith v. McHan*, 56 Idaho 43, 49 Pac. 2d 1102.

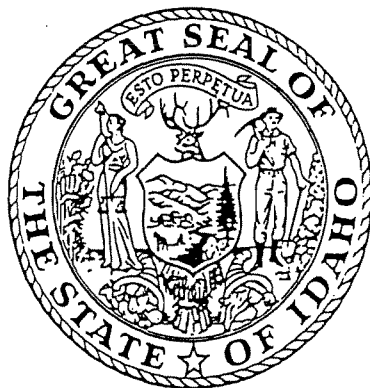
The State Fund's coverage is evidenced by an insurance policy, the coverage of other carriers by a surety bond. Their legal effect is the same. Liability is unlimited in amount, a carrier assuming the entire statutory liability of its patron employer. The State Fund's policy is not only unlimited but open-end, subject to cancellation on 30 days' notice. Private carriers' bonds, also unlimited in amount, generally run for an annual term, renewable by continuation certificates. Of late years at least two companies have been issuing open-end bonds, terminable by cancellation on not less than 10 days' notice. Sec. 72-808, I.C.

# STARTING A BUSINESS IN IDAHO

The Idaho Department of Commerce is pleased to present the 1995 edition of *Starting a Business in Idaho*. This booklet provides Idaho entrepreneurs and businesses new to our state with the information necessary to successfully begin operation. It highlights the business registration process and the regulatory issues a new business will encounter. A complete directory of agencies specializing in assistance to start-ups is also provided.

This guide is published as part of Idaho's commitment to its business community in working for a prosperous economy and a strong climate of business opportunity. The Idaho Department of Commerce supports these efforts with a variety of services and is available to assist businesses and individuals in fostering the continued prosperity of the state.

PHILIP E. BATT, GOVERNOR  
JAMES V. HAWKINS, DIRECTOR



THIS BOOKLET IS PUBLISHED BY  
THE DIVISION OF ECONOMIC DEVELOPMENT.

FOR MORE INFORMATION, PLEASE CONTACT:

IDAHO DEPARTMENT OF COMMERCE  
700 WEST STATE STREET  
P.O. Box 83720  
BOISE, IDAHO 83720-0093  
(208) 334-2470

<http://www.idoc.state.id.us>

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number from the Idaho State Tax Commission by filing an IBR-1. Employers are assigned a number and issued an employer tax packet with payroll reporting forms and instructions for reporting of wages paid and the state income taxes withheld. Every employer who is required by the Internal Revenue Service to deduct and remit federal income tax from wages and salaries paid to employees must also deduct and remit Idaho income tax. Deductions for state income tax are made using the employee's federal Form W-4 and the Idaho Income Tax Withholding Tables.

#### *Idaho Unemployment Tax*

Idaho businesses with employees are required to pay an unemployment tax. As mentioned above, the same form IBR-1 is used also to secure an employer account number and tax rate for the payment of Idaho's unemployment tax from the Idaho Department of Employment. Using this rate, number and instructions, employers make quarterly unemployment tax payments.

For more information on Idaho's unemployment tax, contact your local Job Service office (see page 19) or the state office at:

Idaho Department of Employment  
Employer Accounts Bureau  
317 Main Street  
Boise, ID 83735  
(208) 334-6318, (800) 448-2977  
Fax: (208) 334-6301

#### **WORKERS' COMPENSATION**

Most employers operating in Idaho are required to carry workers' compensation insurance. To fulfill this requirement, a business can insure with one of almost 300 private providers in the state or with the Idaho State Insurance Fund. In special cases, self-insurance is also permitted through the Idaho Industrial Commission. Insurance rates are the same for all insurance carriers in Idaho, but the dividends paid by the insurers vary. The State Insurance Fund is collectively owned by policy holders rather than state-owned, and it has a history of returning

very competitive dividends.

For more information on workers' compensation or a copy of "Workers' Compensation: A Guide for Employers" contact:

Idaho Industrial Commission  
P.O. Box 83720  
Boise, ID 83720-0041  
(208) 334-6000, (800) 950-2110  
Fax: (208) 334-3711

#### **IDAHO STATE LABOR REGULATIONS**

To ensure compliance with Idaho's regulations on wages and hours, see "A Guide to Idaho Labor Laws" which is available from:

Idaho Department of Labor  
and Industrial Services  
P.O. Box 83720  
Boise, ID 83720-4801  
(208) 334-2327, Fax: (208) 334-2683

#### **FEDERAL LABOR REGULATIONS**

Businesses with employees should be aware of U.S. Department of Labor regulations pertaining to work conditions, wages and payment practices. These activities are governed specifically by the Occupational Safety and Health Administration (OSHA) which produces the "OSHA Handbook for Small Businesses," and the Wage and Hour Division which offers a "Handy Reference Guide to the Fair Labor Standards Act." These publications and more information are available from:

U.S. Department of Labor  
Wage and Hour Division  
3150 North Lake Harbor Lane  
Suite 102  
Boise, ID 83703  
(208) 334-1029, Fax: (208) 334-9475

U.S. Department of Labor  
Occupational Safety and Health  
3050 North Lake Harbor Lane  
Suite 134  
Boise, ID 83703  
(208) 334-1867, Fax: (208) 334-9407



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

November 3, 1997

Representative Jeff Alltus  
District 3, Kootenai County  
P.O. Box 2140  
Hayden, Idaho 83835

Dear Representative Alltus:

Drew Forney, Manager of the State Insurance Fund, asked me to respond to your legal inquiry "Do policyholders have any ownership rights to the State Insurance Fund surplus?". The answer is "no."

Enclosed please find a "Memorandum in Support of Defendants' Motion to Dismiss Under Rule 12(b)(6)" that was filed in a 1996 lawsuit. I believe this Memorandum helps answer the question and for your convenience I have generally summarized some of the points in it for you.

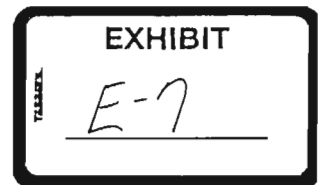
The plaintiff in this lawsuit alleges that the State Insurance Fund was actually a trust fund and that 1996 Senate Bill No. 1377 would improperly use the "policyholders/shareholders" equity surplus when workers' compensation insurance was sold at the minimum annual premiums and was sold to agriculture workers. The Complaint further alleged that the "shareholders" of the Fund would subsidize farm workers and that this was an unlawful taking of the equity surplus of the "shareholders" without due process and without compensation.

The Attorney General's Office, on behalf of the Fund, analyzed the statutes and case law at issue and found that the plaintiff's legal conclusion that a Fund policyholder was a shareholder of the Fund was erroneous. The term "shareholder" does not appear anywhere in Idaho Code § 72-901, *et seq.*, the chapter of the Idaho Code that establishes and regulates the Fund. Also, the manager of the Fund has no statutory authority to issue shares in the Fund to anyone. Also, the Fund is not a private corporation with shareholders but is instead a state agency. It is also true that policyholders have no contract rights in the Fund's surplus. The policyholders have no contract rights because the Idaho Legislature has not provided them with contract rights. Also, simply because policyholders in the past may have enjoyed reduced premiums or dividends, such

Civil Litigation Division  
P.O. Box 84720, Boise, Idaho 83720-0020  
Telephone: (208) 334-2400, FAX: (208) 334-2430  
Located at 650 W. State Street  
1000 U.S. Justice Building, Lower Level

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Representative Jeff Allus

November 3, 1997

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does not give rise to a contract right or ownership because the Idaho Legislature placed the decision whether to declare a dividend in the manager's discretion.

In Idaho, since the policyholders have no property right in the Fund's surplus, there was nothing to be taken from them. Also, the argument that the surplus or reserves of the Fund are held in "trust" for individual policyholders is wrong because such was not provided for by the Idaho Legislature. Any use of the words "in trust" could only be said to mean a general responsibility on behalf of the Fund to insure that the assets of the Fund were held and expended in accordance with law.

On July 18, 1996, District Judge Craig C. Kosonen in the First Judicial District heard oral arguments on the issues and ruled on behalf of the State Insurance Fund and Manager Forney, stating in pertinent part as follows:

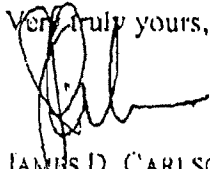
... the problems facing Plaintiff are problems that the Court deems, however, it cannot remedy, because I find that as a matter of law Plaintiff is not the owner of any interest, property right in the surplus and reserves . . . .

This ruling confirmed that the policyholders of the Fund were not shareholders and that policyholders have no contractual, property, equity or trust interest in the Fund or its surplus or reserves.

After Judge Kosonen announced his ruling, the plaintiff in the lawsuit filed a Motion to Reconsider the ruling and Judge Kosonen has not issued a final decision as of the date of this letter.

I sincerely hope that this letter, the enclosed Memorandum, and the words of Judge Kosonen have answered your question.

Very truly yours,



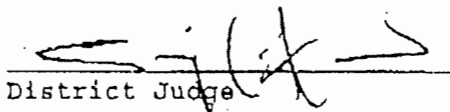
JAMES D. CARLSON  
Deputy Attorney General  
Civil Litigation Division

JDC/ejf  
Enclosure  
11/17/97

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STATE OF IDAHO ) ss  
County of Kootenai )  
FILED December 18, 1997  
AT 3:00 O'Clock P. M.  
CLERK DISTRICT COURT

  
District Judge

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KELSO & IRWIN, P.A.

Plaintiff,

vs.

State Insurance Fund; and DREW  
FORNEY, Manager of the State Insurance  
Fund, individually pursuant to  
I.C. §72-907,

Defendants.

CASE NO. CV-96-02682

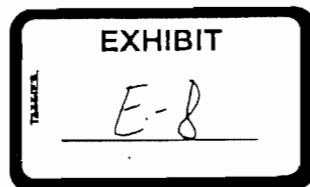
MEMORANDUM ORDER ON  
MOTION FOR RECONSIDERATION

Motion under I.R.C.P. 11(a)(2) to reconsider oral pronouncement of order granting defendants' motion to dismiss for failure to state a claim under 12(b)(6). Held: Oral pronouncement granting motion to dismiss plaintiff's entire case is interlocutory and subject to reconsideration under Rule 11(a)(2), permitting review of additional matter without requirement of finding that it is "newly discovered evidence" per standards applicable to Rule 60(b)(2); that, upon reconsideration, plaintiff has property interest in State Insurance Fund conferring standing to bring suit, and oral order granting motion to dismiss is vacated.

Starr Kelso, KELSO & IRWIN, P.A., Coeur d'Alene, Idaho,  
plaintiff pro se.

MEMORANDUM ORDER ON MOTION FOR RECONSIDERATION -1-

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standing if it otherwise has property rights in contention. The similarities between the SIF and a mutual insurance company are all related to the nature of the assets of the SIF, their source, for whom they are held and administered, and to whom they may be paid over, either as benefits under Idaho's program of worker's compensation, or as dividends to the policyholders.

The question of estoppel. It is not necessary, for purposes of assessing the present motion, that the Court address the binding versus non-binding nature of, for example, the statement in paragraph 3 of Ex. 6 to plaintiff's affidavit of counsel dated June 26, 1996, being a form response from the SIF during its management by George Bambauer intended to be given to employers inquiring into coverage by the SIF, wherein Mr. Bambauer states:

3. The State Insurance Fund is a policyholder owned, nonprofit insurance company.

The cited provisions of Chapter 9, Title 72, Idaho Code demonstrate the property interest of plaintiff and policyholders similarly situated without resort to characterizations by state officers or reference to the legislative title of Chapter 81. The references to Mr. Forney's deposition are cited solely to note the treatment by the administrators of the fund coincidentally consistent with the language of the statute.

As discussed above, plaintiff has a property interest in the fund, as do policyholders similarly situated. The Idaho Supreme Court held in *State v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962), that the money in the SIF does not belong to the state and is not in the state "treasury" within the meaning of Article 7, Sec. 13 of the Constitution. It recognized a similar ruling in the State of Nevada in the case of *Beebe v. McMillan*, 136 P. 108, and



90 Idaho 498

BOARD OF COUNTY COMMISSIONERS  
OF TWIN FALLS COUNTY, Idaho,  
et al., Plaintiff-Appellants,

v.

IDAHO HEALTH FACILITIES AUTHORITY,  
Defendant-Respondent.

No. 11564.

Supreme Court of Idaho.

Dec. 31, 1974.

As Amended Jan. 14, 1975.

Three hospitals and bank brought action for declaratory judgment to determine whether or not state health facilities authority had exceeded constitutional limitations in agreeing to issue bond anticipation notes to obtain financing for plaintiff hospitals which notes were to have been purchased by plaintiff bank. The Fifth Judicial District Court of Camas County, Charles Scoggin, J., held that the authority in agreeing to issue bond anticipation notes had acted in contravention of both the State and Federal Constitutions, and plaintiffs appealed. The Supreme Court, Bakes, J., held that actions taken by authority for purpose of financing construction and remodeling of health facilities and refinancing outstanding debt of participating organizations operated by either public or private nonprofit entities was for a public purpose; that issuance of bond anticipation notes by the authority did not constitute impermissible giving, loaning or pledging of faith and credit of the state; that exemption from taxation of state health facilities authority was both necessary and just; that state health facilities authority was not a corporation for purposes of constitutional prohibition against special laws creating corporations but was a public body without being an impermissible agency of the state; that grant of power to state health facilities authority did not constitute impermissible delegation of legislative authority; that authority's actions in contracting to provide financing to hospital owned by religious sect violated

state constitutional prohibitions against use of public funds or moneys in aid of a religious society; and that action of county board in agreeing to amortize principal interest payments on notes and bonds issued to them by authority did not constitute an impermissible county indebtedness.

Reversed in part and affirmed in part. McFadden, J., filed a dissenting opinion.

## 1. Constitutional Law ☞48(1)

Every legislative enactment is entitled to a strong presumption of constitutionality.

## 2. Constitutional Law ☞48(5)

Legislative declaration of public purpose is entitled to utmost consideration but is not binding and conclusive upon issue of public purpose.

## 3. States ☞21

The state as well as municipal corporations are limited to functions and purposes which are public in character as distinguished from those which are private in character and engaged in for profit. Const. art. 3, § 1 et seq.

## 4. States ☞119

The use of funds derived by state health facility authority from sale of bond anticipation notes to better existing health facilities throughout the state where such facilities are operated by either public or private nonprofit entities is for a "public purpose" within meaning of rule limiting functions of state to public purposes. Const. art. 3, § 1 et seq.

## 5. States ☞119

Fact that incidental benefits may fall to profit-making enterprises, such as a bank or other financial institution which buys notes issued by state health facilities authority, does not invalidate the public purpose nature of program since programs with public goals will be invalidated only if private interests are primarily benefited. Const. art. 3, § 1 et seq.

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ture was prohibited from establishing. In these three cases the legislature created public bodies that would become operative upon approval of another public body, but public bodies were nevertheless created and no constitutional challenge mounted against any of them under Article 3, § 19.

[10] In State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962), the question of the status of the state insurance fund was before this Court. The fund was established by the legislature in I.C. § 72-901 et seq. The fund, into which premiums were to be paid according to the Workmen's Compensation Law and the Occupational Disease Compensation Laws, was to be administered by a state insurance manager. The manager was to have full powers to administer the fund, including power to promulgate administrative regulations, to sue and be sued, to contract as necessary to administer the fund, to acquire property for office space as necessary, to employ assistants, to invest the surplus of the fund and to make inspections of facilities of participating employees. I.C. §§ 72-902—72-906, 72-912 and 72-928. The manager was to have no personal liability for acts done in his official capacity. I.C. § 72-907. The fund was held not to be a corporation within the meaning of Article 3, § 19, or Article 11, § 2. But neither was the fund a state agency in the sense that the constitutional restrictions upon the state government applied to it. Money in the fund was held not to be state money nor was it money in the state treasury, although it was deposited with the state treasurer. Thus, payments could be made from the fund to meet claims against the state without meeting the constitutional requirement of approval by the State Board of Examiners under Article 4, § 18, and could be drawn from the treasury without an appropriation as required under Article 3, § 13. In discussing the status of the fund, this Court said that "[a]lthough not a corporation, the fund has some of the characteristics of a private corporation and occupies a similar status." 84 Idaho at 88, 370 P.2d at 781. The dichotomy urged in Enking was

rejected in Musgrave. Thus, under the doctrine of the Musgrave case there are state-created entities which are neither corporations nor state agencies subject to all the restrictions of the state constitution.

[11] Unlike corporations described in Title 30 of the Idaho Code, the state insurance fund is not controlled by private parties with power to choose the person that will administer the entity, nor are there such private parties with power to change the purposes for which it exists, even from one closely related public purpose to another. The powers to sue and be sued, to have a seal, to have perpetual succession, to make administrative regulations, to acquire and obtain property and issue notes are shared by a wide variety of government agencies along with most corporations. Thus, the existence of these powers cannot be determinative of corporate status under the meaning of the constitutional provisions being discussed. The state insurance fund has no corporate seal, but having one would not have changed its status. The state insurance fund was not explicitly given a power of perpetual succession, but the program it administers depends upon perpetual administration by successive managers of an ongoing entity. The state insurance fund therefore met the requirements of being a corporation as set out in Enking, but it was held not to be a corporation. It would appear then that the main distinction between a prohibited corporation under Article 3, § 19, of the Idaho Constitution, and a permissible "independent public body politic and corporate" under the doctrine of the Musgrave, Lloyd, Wood and Boise Redevelopment Agency cases are (1) the absence of the private parties with the right to control the entity or to manage it, and (2) the inability of private parties to change the fundamental structure and public purpose of the entity as set out in the law creating it. These features set them apart from corporations within the meaning of Article 3, § 19, or Article 11, § 2.

[12] The Idaho Health Facility Authority is a board appointed by the governor. It cannot choose its own governing

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body. Because of the public control over the Authority, it differs from the state bar found to be unconstitutional in the Jackson case, *supra*, where the lawyers of the state were given the right to elect the governing board of the bar. The Authority is restricted to a narrow range of permissible public goals and a narrow means of achieving them. In this regard it differs from the State Water Conservation Board in the *Enking* case, the primary purpose of which the Court found to be the undermining of the right of private appropriation of water. Like the state insurance fund, the Authority is not a corporation within the meaning of Article 3, § 19, or Article 11, § 2, of the Idaho Constitution. Like the state insurance fund, it is a public body but it is not an agency of the state within the meaning of all of the prohibitions against state action within the Idaho Constitution. Neither Article 3, § 19, nor Article 11, § 2, was violated by its creation.

## V

[13] The fifth assignment of error alleges that the trial judge was incorrect in ruling that legislative power had been delegated to the Authority in violation of Article 2, § 1, and Article 3, § 1, of the Constitution of Idaho. Article 2, § 1, provides that there are to be three separate branches of government in Idaho, and no person exercising power in one branch shall exercise powers in another. This section does not expressly prohibit a delegation of legislative power, but it has been interpreted to prevent it. *See Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939). Article 3, § 1, provides that "The legislative power of the state shall be vested in a senate and house of representatives." This has been interpreted to mean that:

"The legislative power of the state is by article 3 of the constitution vested in the Senate and House of Representatives, and it is a fundamental principle of representative government that, except as authorized by the organic law, the legislative department cannot delegate any of its powers to make laws to any other body or authority." *State v. Purcell*, 39

Idaho 642, at 649, 228 P. 796, at 797 (1924).

The Authority has not been given unlimited discretion and authority. Its powers, as given in I.C. § 39-1447, do not give it any lawmaking power, but merely the power to determine facts necessary to carry out its functions, to regulate itself in carrying out the duties given to it by law, and to enter into agreements authorized by law. In *Boise Redevelopment Agency v. Yick Kong Corp.*, *supra*, it was said when the question of a legislative delegation of power to the agency was at issue, that:

"[The legislature] can empower an agency or an official to ascertain the existence of the facts or conditions upon which the law becomes operative . . . . The legislature must itself fix the condition or event on which the statute is to operate, but it may confide to some suitable agency the fact-finding function as to whether the condition exists, or the power to determine, or the discretion to create, the stated event. The nature of the condition is, broadly, immaterial." 94 Idaho at 885, 499 P.2d at 584.

There has been no unbridled discretion given to the Authority. It can act only for a limited purpose in a limited manner after a finding that certain conditions exist. There has been no lawmaking authority delegated to it. Neither Article 2, § 1, nor Article 3, § 1, of the Constitution of Idaho has been violated.

## VI

The sixth and seventh assignments of error assert that the trial court was incorrect in ruling that the Authority, by contracting to provide financing to St. Benedict's Hospital, which was owned by the Idaho Corporation of Benedictine Sisters, a religious sect, violated Article 1, § 4, Article 21, § 19, and Article 9, § 5, of the Constitution of Idaho, and the First Amendment to the Constitution of the United States. These assignments of error relate to the general issue of whether or not the Authority's action constitutes an establishment of religion, whether persons are being required

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0000-36129-96-3

# ANNUAL STATEMENT

AS OF DECEMBER 31, 1996  
OF THE CONDITION AND AFFAIRS OF THE

## IDAHO STATE INSURANCE FUND

NAIC Group Code.....

NAIC Company Code..... 36129

Employer's ID Number..... 82-0412279

Organized under the Laws of the State of Idaho, using as the point of entry, made to the  
INSURANCE DEPARTMENT OF THE STATE OF IDAHO  
PURSUANT TO THE LAWS THEREOF

Incorporated..... December 31, 1917

Commenced Business..... January 1, 1918

Statutory Home Office..... 1215 West State Street ..... Boise ..... ID ..... 83720-0044  
(Street and Number) (City or Town, State and Zip Code)

Main Administrative Office ..... 1215 West State Street ..... Boise ..... ID ..... 83720-0044  
(Street and Number) (City or Town, State and Zip Code)

208-334-2370  
(Area Code) (Telephone Number)

Mail Address ..... PO Box 83720 ..... Boise ..... ID ..... 83720-0044  
(Street and Number or P. O. Box) (City or Town, State and Zip Code)

Primary Location of Books and Records ..... 1215 West State Street ..... Boise ..... ID ..... 83720-0044  
(Street and Number) (City or Town, State and Zip Code)

208-334-2370  
(Area Code) (Telephone Number)

Annual Statement Contact ..... E. Barton Challee  
(Name)

208-334-2370-430  
(Area Code) (Telephone Number) (Extension)

### OFFICERS

Manager ..... Drew S Forney

### VICE PRESIDENTS

### DIRECTORS OR TRUSTEES

Phillip E Ball, Governor  
Alan Lance, Attorney General  
State Board of Examiners \*

Pete Cenarusa, Secretary of State  
J D Williams, State Controller - Non-Voting Secretary of Board

\* The State Board of Examiners provides ministerial review of claim distribution and premium refunds to policyholders each month in accordance with Idaho Code #72-927.

State of Idaho  
County of Ada

Drew S Forney, Manager, of the IDAHO STATE INSURANCE FUND being duly sworn, each deposes and says that they are the above described officers of the said insurer, and that on the thirty-first day of December last, all of the herein described assets were the absolute property of the said insurer free and clear from any liens or claims thereon, except as herein stated, and that this annual statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to are a full and true statement of all the assets and liabilities and of the condition and affairs of the said insurer as of the thirty-first day of December last, and of its income and deductions therefrom for the year ended on that date, and have been completed in accordance with the NAIC annual statement instructions and accounting practices and procedures manuals except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively.

*[Signature]*  
Manager

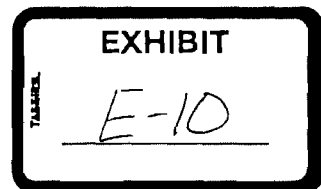
Subscribed and sworn to before me this

Day of *[Signature]* 1997  
*[Signature]*

- a. Is this an original filing? Yes  No
- b. If no:
  1. State the amendment number.....
  2. Date filed.....
  3. Number of pages attached.....

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72-907. Personal liability. — The manager shall not, nor shall any person employed by him, be personally liable in his private capacity for or on account of any act performed or contract entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the state insurance fund or affairs relating thereto. [1917, ch. 81, § 82, p. 252; reen. C.L. 256:82; am. 1919, ch. 8, § 47, p. 43; C.S., § 6294; am. 1921, ch. 104, § 8, p. 233; I.C.A., § 43-1017; am. 1939, ch. 251, § 7, p. 617; am. 1941, ch. 20, § 7, p. 37.]

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EXHIBIT

E-11

72-903. Further statement of powers. — a. The manager shall have full power to determine the rates to be charged for insurance in said fund, and to conduct all business in relation thereto, all of which business shall be conducted in the name of the state insurance manager.

b. Premium payments, voluntary compensation overpayments, and penalties pursuant to the provisions of this act, which remain uncollected four (4) years after they have become due, may be charged off as uncollectible by the manager, if no assets belonging to the liable person and subject to attachment can be found, and in the opinion of the manager there is no likelihood of collection, and the records relating thereto may be destroyed.

c. The manager may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records or reports of the fund or transcripts thereof, as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under this act if the original record or records would have been admissible therein.

d. The manager may provide by regulation for the destruction or disposition, after reasonable periods, of any records, reports, transcripts or reproductions thereof, or other papers in the custody of the manager, the preservation of which is no longer necessary for the establishment of premium liability or benefit rights or for any purpose necessary to the proper administration of the fund. [1917, ch. 81, § 78, p. 252; reen. C.L. 256:78; C.S., § 6290; I.C.A., § 43-1703; am. 1939, ch. 251, § 3, p. 617; am. 1941, ch. 20, § 3, p. 37; am. 1951, ch. 270, § 1, p. 571.]

Compiler's notes. Section 2 of S.L. 1951, ch. 270 declared an emergency. Approved March 20, 1951.

Cross ref. Detailed directions as to rates, § 72-913.

Sec. to sec. ref. This section is referred to in § 41-1618.

Cited in: State v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

#### ANALYSIS

Liability.  
Powers of manager.

#### Liability.

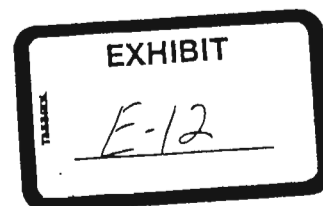
Department is liable for payment to employee, same as any private insurance company. Brady v. Place, 41 Idaho 747, 242 P. 314 (1925); Brady v. Place, 41 Idaho 753, 243 P. 654 (1926).

#### Powers of Manager.

Sections 72-901 — 72-904 and 72-907 give the state insurance manager complete power over the fund and settlements thereby; he has power to bind the fund, which has the status of a private insurance company. Rivera v. Johnston, 71 Idaho 70, 225 P.2d 858 (1950).

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72-9. Investment of surplus or reserve. — The endowment and investment board shall at the direction of the manager invest any of the surplus or reserve funds belonging to the state insurance fund in real estate and the same securities and investments authorized for investments by insurance companies in Idaho as shall be approved by the manager. The endowment fund investment board shall be the custodian of all such securities or evidences of indebtedness, provided that the endowment fund investment board may employ a custodial bank to hold such securities. The state insurance fund is authorized to pay the actual expenses of the endowment fund investment board which the board incurs in investing surplus or reserve funds and which are approved by the manager of the state insurance fund. It shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all warrants or vouchers drawn on the state insurance manager and by the state controller. The endowment fund investment board at the request of the manager may sell any of such securities, the proceeds thereof to be paid over to the state treasurer for said insurance fund. Where such funds of the state insurance fund have been or are hereafter invested, with real property as security, and the said real property has been or is hereafter acquired by the state of Idaho by reason of foreclosure proceedings, voluntary deed, or otherwise, such property shall be held in trust by the state of Idaho for the benefit of the state insurance fund and may be sold by the endowment fund investment board at the request of the manager of said fund, and said sale may be had at private sale or public auction, upon such terms and under such conditions as the endowment fund investment board deems for the best interest of the state, but no sale of real estate at private sale may be had for a less price than the amount, with accrued interest, costs and expenses, which has been invested by the state insurance fund in said real estate. Where such sale is to be made at public auction, it must take place in the county where the real estate is situated, and notice of time and place of sale must be posted in three (3) of the most public places in such county, and published in a newspaper, if there be one (1) printed in the said county, for at least once a week for not less than two (2) consecutive weeks, within thirty (30) days prior to the sale. Where such sale is to be made at private sale, it must take place in the county where the real estate is situated, and notice of time and place of sale must be posted in three (3) of the most public places in such county, and published in a newspaper, if there be one (1) printed in said county, for at least once a week for not less than two (2) consecutive weeks, within thirty (30) days prior to the sale. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen (15) days from the first publication of notice, and the sale must not be made before that day, but must be made within six (6) months thereafter. The bids or offers must be in writing, sealed, and delivered to the investment manager of the endowment fund investment board. The real estate and tenements, or the part thereof or interest therein to be sold, must be described with common certainty in the notice. The deed or deeds to such real estate shall be executed in the name of the state of Idaho as required by section 16, chapter 4 of the constitution of the state of Idaho, and the proceeds from any such sale be paid over to the state treasurer for said insurance funds. (C.S., § 6299, as enacted by 1925, ch. 129, § 2, p. 183; I.C.A., § 43-1712; am. 1939, ch. 251, § 12, p. 617; am. 1941, ch. 20, § 10, p. 37; am. 1943, ch. 168, § 1, p. 355; am. 1969, ch. 466, § 13, p. 1326; am. 1970, ch. 170, § 1, p. 498; am. 1978, ch. 18, § 1, p. 36; am. 1994, ch. 180, § 237, p. 420.)

Compiler's notes. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 (January 2, 1995) if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 237 of S.L. 1994, ch. 180 became effective January 2, 1995.

The reference to "section 16, chapter 4" of the State Constitution near the end of this section appears to be to Art. 4, § 16 of the Constitution.

Former C.S., § 6299 (S.L. 1917, ch. 81, § 88; reen. C.L. 256:88) as amended by S.L.

1921, ch. 244 was repealed by S.L. 1925, ch. 129, § 1, and the above section enacted as a new section to be known as C.S., § 6299.

Section 3 of S.L. 1925, ch. 129 declared an emergency.

Sections 236 and 238 of S.L. 1994, ch. 180 are compiled as §§ 72-910 and 72-1346, respectively.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

- Cross ref. Notice by mail, § 60-109A.

EXHIBIT

E-13

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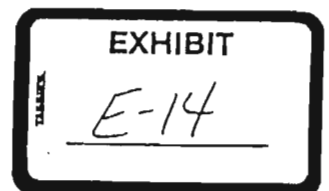
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72-927. Payment of compensation and refunds. — The state insurance manager shall submit each month to the state board of examiners an estimate of the amount necessary to meet the current disbursements for workmen's compensation insurance losses and premium refunds to policyholders from the state insurance fund, during each succeeding calendar month, and when such estimate shall be approved by the state board of examiners, the state treasurer is authorized to pay the same out of the state insurance fund upon sight drafts drawn by the state insurance manager. At the end of each calendar month the state insurance manager shall account to the state board of examiners for all money so received, furnishing proper

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12 pages

IDAHO COLLECTION  
OF IDAHO LIBRARY

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REPORT OF CONDITION

of the

STATE INSURANCE FUND

as of

October 31, 1920

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D. W. CHURCH

State Insurance Manager

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EXHIBIT  
E-15

ADMINISTRATION EXPENSES

The foregoing table sets out in detail the cost of administering the State Insurance Fund from the time the office was established (July 1, 1917) to the 31st day of October, 1920, which is the end of our actuarial year. The total cost for this period of three years and four months is \$85,419.61, which figure is just 9.75% of the income of the Fund during that period. We consider this an exceptionally favorable showing, especially when it is pointed out that during the six months following July 1, 1917, we expended \$10,585.59 in organization of the office, during which period no income was received, due to the fact that the insurance features of the law did not become effective until January 1, 1918.

In a most important particular, our status is materially different from that of most of the state offices and departments. We are essentially a business institution, for, while we are charged with the duty of enforcing the insurance provisions of the law, our principal work is that of carrying on an insurance business. In this we are in direct competition with a number of strong, old-established companies and mutual associations. It will thus be seen that our work must necessarily be conducted according to strict business principles.

It would be impossible to make anyone, who has not had practical experience with such a business, understand the enormous amount of detail and the complex and technical administration, underwriting, auditing, claims-adjusting and merit-rating problems connected with the conduct of a state compensation insurance business. We combine within our office all the functions performed in a private company by the home office organization, the general agents, local agents, payroll auditors, claims adjusters, inspectors, etc. In view of the enormous amount of work required to be performed in such an office, we consider that it has been conducted at a surprisingly small cost.

The entire expense of administering the State Insurance Fund is met out of the earnings of the office and does not in any way come out of the general funds of the state. It is true that an appropriation of \$20,000.00 was made from the general fund at the time the office was established, but in accordance with the terms of the Act this amount was refunded to the general fund from our earnings. To put it in another way: The Legislature simply sets the maximum amount of our own earnings that we may expend in maintaining the office and in carrying on and extending our business. This is a question materially different from that of fixing the appropriation of a state department or institution whose work falls within fixed limits and the expense of maintenance of which is borne by the taxpayers in general.

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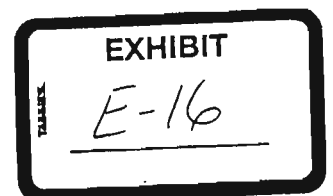
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72-911. Surplus and reserve. — Ten per centum (10%) of the premiums collected from employers insured in the fund shall be set aside by the manager for the creation of a surplus until such surplus shall amount to the sum of \$100,000, and thereafter 5 per centum (5%) of such premiums until such time as in the judgment of the manager such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The manager shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity. [1917, ch. 81, § 87, p. 252; reen. C.L. 256:87; C.S., § 6298; I.C.A., § 43-1711; am. 1939, ch. 251, § 11, p. 617; am. 1941, ch. 20, § 9, p. 37.]

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NOTES TO FINANCIAL STATEMENTS

Note 1

Loss and loss adjusting expenses

The Fund does not include the loss and loss adjusting expense related to its assumed business from the National Workers Compensation Reinsurance Pool on lines 1 and 2 page 3 of the annual statement. Alternatively, the Fund records the reserves for this assumed business on line 2101 as an aggregate write-in for liabilities. The reserves recorded by the Fund are those reported to the Fund by the pool. Workpapers and an actuarial opinion in support of the assumed reserves are not provided by the pool's actuaries. In addition the Fund's consulting actuaries do not express an opinion on these assumed loss and loss adjusting expense reserves. Due to the lack of support for these assumed reserves it is recommended that for future annual statement reporting that the Fund request an actuarial opinion from the pool's actuaries or request that their consulting actuary include a review of the assumed reserves in their actuarial report.

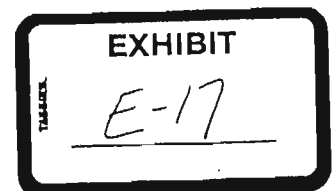
SUMMARY

Title 72 Chapter 9 Section 11 requires that a portion of premiums collected shall be set aside to establish a surplus sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The minimum balance for this reserve shall amount to \$100,000 with the maximum reserve left to the judgement of The Manager of the Fund. The Manager of the Fund has established and maintains a segregated surplus reserve in the amount of \$6,000,000 to comply with this provision.

The Manager of the Fund has also established a special surplus fund which reflects the net underwriting results experienced by the Funds participation in the National Workers Compensation Reinsurance Pool. As of December 31, 1992 the net result from inception of the Fund's participation in the pool is a decrease in surplus of \$1,683,788.

The results of the examination disclosed that as of December 31, 1992 the Fund had admitted assets of \$215,641,612, total liabilities of \$162,846,425 special surplus funds of \$4,316,212 and unassigned funds of \$48,478,975 or surplus as regards policyholders of \$52,795,187.

The above amounts are the same as was reported by the Fund in its amended 1992 annual statement. No substantive financial statement changes were identified as a result of this examination.



LIABILITIES, SURPLUS AND OTHER FUNDS

|  | 1<br>Current Year | 2<br>Prior Year |
|--|-------------------|-----------------|
| 1 Losses (Part 3A, Line 32, Column 5)  | 126,579,914       | 133,086,883     |
| 1A Reinsurance payable on paid loss and loss adjustment expenses (Schedule F, Part 1, Column 2)                    |                   |                 |
| 2 Loss adjustment expenses (Part 3A, Line 32, Column 6)  | 13,464,000        | 14,485,000      |
| 3 Contingent commissions and other similar charges   |                   |                 |
| 4 Other expenses (excluding taxes, licenses and fees)  | 1,214,654         | 814,367         |
| 5 Taxes, licenses and fees (excluding federal and foreign income taxes)  | 1,603,886         | 1,675,139       |
| 6 Federal and foreign income taxes (excluding deferred taxes)  |                   |                 |
| 7 Borrowed money   |                   |                 |
| 8 Interest, including \$.....0 on borrowed money   |                   |                 |
| 9 Unearned premiums (Part 2A, Line 34, Column 5) (after deducting ceded reinsurance unearned premiums of \$.....0) | 26,241,909        | 34,071,637      |
| 10 Dividends declared and unpaid:  |                   |                 |
| a Stockholders   |                   |                 |
| b Policyholders  | 53,782,633        | 33,507,690      |
| 11 Funds held by company under reinsurance treaties (Schedule F, Part 3, Column 14)                                |                   |                 |
| 12 Amounts withheld or retained by company for account of others   |                   |                 |
| 13 Provision for reinsurance (Schedule F, Part 7)  | 14,134            | 3,650           |
| 14 Excess of statutory reserves over statement reserves (Schedule P Interrogatories)                               | 25,763,023        | 9,205,252       |
| 15 Net adjustments in assets and liabilities due to foreign exchange rates   |                   |                 |
| 16 Drafts outstanding  | 108,513           | 79,241          |
| 17 Payable to parent, subsidiaries and affiliates  |                   |                 |
| 18 Payable for securities  |                   |                 |
| 19 Liability for amounts held under uninsured accident and health plans  |                   |                 |
| 20 Aggregate write-ins for liabilities   | 5,805,432         | 7,239,515       |
| 21 Total liabilities (Lines 1 through 20)  | 254,578,098       | 234,168,434     |
| 22 Aggregate write-ins for special surplus funds   | 5,336,045         | 3,853,777       |
| 3A Common capital stock  |                   |                 |
| 3B Preferred capital stock   |                   |                 |
| 3C Aggregate write-ins for other than special surplus funds  | 0                 | 0               |
| 4A Surplus notes   |                   |                 |
| 4B Gross paid in and contributed surplus   |                   |                 |
| 4C Unassigned funds (surplus)  | 144,850,014       | 131,586,950     |
| 4D Less treasury stock, at cost:   |                   |                 |
| (1) .....0 000 shares common (value included in Line 23A \$.....0)   |                   |                 |
| (2) .....0 000 shares preferred (value included in Line 23B \$.....0)  |                   |                 |
| 25 Surplus as regards policyholders (Lines 22 to 24C, less 24D) (Page 4, Line 32)                                  | 150,186,059       | 135,440,727     |
| 26 TOTALS (Page 2, Line 22, Col. 4)  | 404,764,157       | 369,609,161     |

DETAILS OF WRITE-INS

|  |           |             |
|--|-----------|-------------|
| 001 Loss Reserve - NCCI Reinsurance Pool                           | 4,922,181 | 5,385,464   |
| 002 Credits Due Policyholders                                      | 863,251   | 844,051     |
| 003 Rental and Interest Charged in Advance                         | 20,000    | 10,000      |
| 008 Summary of remaining write-ins for Line 20 from overflow page  | 0         | 0           |
| 009 Totals (Lines 001 thru 003 plus 008) (Line 20 above)           | 5,805,432 | 7,239,515   |
| 201 Catastrophic Reserve   | 6,000,000 | 6,000,000   |
| 202 NCCI Reinsurance Pool  | (663,955) | (2,146,223) |
| 203  |           |             |
| 208 Summary of remaining write-ins for Line 22 from overflow page  | 0         | 0           |
| 209 Totals (Lines 201 thru 203 plus 208) (Line 22 above)           | 5,336,045 | 3,853,777   |
| 001  |           |             |
| 002  |           |             |
| 003  |           |             |
| 008 Summary of remaining write-ins for Line 23C from overflow page | 0         | 0           |
| 009 Totals (Lines 001 thru 003 plus 008) (Line 23C above)          | 0         | 0           |

STATEMENT OF INCOME  
UNDERWRITING INCOME

|  | Current Year | Prior Year  |
|--|--------------|-------------|
| 1 Premiums earned (Part 2, Line 32, Column 4)  | 129,005,276  | 132,075,179 |
| Deductions   |              |             |
| 2 Losses incurred (Part 3, Line 32, Column 7)  | 55,434,252   | 71,812,767  |
| 3 Loss expenses incurred (Part 4, Line 22, Column 1)   | 5,905,390    | 5,975,167   |
| 4 Other underwriting expenses incurred (Part 4, Line 22, Column 2)   | 11,989,018   | 10,675,522  |
| 5 Aggregate write-ins for underwriting deductions  | 0            | 0           |
| 6 Total underwriting deductions (Lines 2 through 5)  | 73,328,660   | 98,873,356  |
| 7 Net underwriting gain or (loss) (Line 1 minus Line 6)  | 55,676,616   | 33,201,823  |
| INVESTMENT INCOME  |              |             |
| 8 Net investment income earned (Part 1, Line 15)   | 21,390,442   | 19,352,191  |
| 9 Net realized capital gains or (losses) (Part 1A, Line 11)  | 10,341,416   | 1,144,724   |
| 9A Net investment gain or (loss) (Lines 8 + 9)   | 31,731,858   | 21,226,312  |
| OTHER INCOME   |              |             |
| 10 Net gain or (loss) from agents' or premium balances charged off (amount recovered \$.....0<br>amount charged off \$.....15,967) | (15,967)     | 43          |
| 11 Finance and service charges not included in premiums (Schedule T, Column 8 total)   |              |             |
| 12 Aggregate write-ins for miscellaneous income  | 1,482,134    | 1,673       |
| 13 Total other income (Lines 10 through 12)  | 1,466,167    | 17,620      |
| 14 Net income before dividends to policyholders and before federal and foreign income taxes (Lines 7 + 9A + 13)                    | 68,874,641   | 54,653,709  |
| 14A Dividends to policyholders (Exhibit 2, Line 16, Column 1 plus Page 3, Line 10b, Column 1 minus Column 2)                       | 53,776,978   | 33,507,598  |
| 14B Net income, after dividends to policyholders but before federal and foreign income taxes (Line 14 minus Line 14A)              | 35,097,663   | 31,116,114  |
| 15 Federal and foreign income taxes incurred   |              |             |
| 16 Net income (Line 14B minus Line 15) (to Line 18)  | 35,097,663   | 31,116,114  |
| CAPITAL AND SURPLUS ACCOUNT  |              |             |
| 17 Surplus as regards policyholders, December 31 prior year (Page 4, Line 32, Column 2)  | 135,440,728  | 74,981,217  |
| GAINS AND (LOSSES) IN SURPLUS  |              |             |
| 18 Net income (from Line 16)   | 35,097,663   | 31,116,114  |
| 19 Net unrealized capital gains or (losses) (Part 1A, Line 12)   | (3,778,043)  | 9,342,459   |
| 20 Change in nonadmitted assets (Exhibit 1, Line 6, Column 3)  | (6,306)      | (72,373)    |
| 21 Change in provision for reinsurance (Page 3, Line 13, Column 2 minus Column 1)  | (10,484)     | (3,650)     |
| 22 Change in foreign exchange adjustment   |              |             |
| 23 Change in excess of statutory reserves over statement reserves (Page 3, Line 14, Column 2 minus Column 1)                       | (16,557,771) | 18,562,105  |
| 24 Capital changes   |              |             |
| a Paid in (Exhibit 2, Line 6, Column 1)  |              |             |
| b Transferred from surplus (Stock Dividend)  |              |             |
| c Transferred to surplus   |              |             |
| 25 Surplus adjustments   |              |             |
| a Paid in (Exhibit 2, Line 7, Column 1)  |              |             |
| b Transferred to capital (Stock Dividend)  |              |             |
| c Transferred from capital   |              |             |
| 26 Net remittances from or (to) Home Office (Exhibit 2, Line 4b minus Line 12b, Column 1)  |              |             |
| 27 Dividends to stockholders (cash)  |              |             |
| 28 Change in treasury stock (Page 3, Line 24D (1) and (2), Column 2 minus Column 1)  |              |             |
| 29 Extraordinary amounts of taxes for prior years  |              |             |
| 30 Aggregate write-ins for gains and losses in surplus   | 277          | 1,115,456   |
| 31 Change in surplus as regards policyholders for the year (Lines 18 through 30)   | 14,745,337   | 60,459,511  |
| 32 Surplus as regards policyholders, December 31 current year (Line 17 plus Line 31) (Page 3, Line 25)                             | 150,186,065  | 135,440,728 |

DETAILS OF WRITE-INS

|      |   |           |
|------|---|-----------|
| 0501 |   |           |
| 0502 |   |           |
| 0503 |   |           |
| 0598 | Summary of remaining write-ins for Line 5 from overflow page  | 0         |
| 0599 | Totals (Lines 0501 thru 0503 plus 0598) (Line 5 above)        | 0         |
| 1201 | Miscellaneous Income  | 1,899     |
| 1202 | Loss on Sale of Office Equipment                              | (2,033)   |
| 1203 | Gain / Loss from Reinsurance Pool                             | 1,482,268 |
| 1298 | Summary of remaining write-ins for Line 12 from overflow page | 0         |
| 1299 | Totals (Lines 1201 thru 1203 plus 1298) (Line 12 above)       | 1,482,134 |
| 3001 | Gain / Loss from Reinsurance Pool                             | 1,115,456 |
| 3002 | Prior Year Correction   | 277       |
| 3003 |   |           |
| 3098 | Summary of remaining write-ins for Line 30 from overflow page | 0         |
| 3099 | Totals (Lines 3001 thru 3003 plus 3098) (Line 30 above)       | 1,115,456 |

agents who were not authorized to make that sale of insurance, in violation of § 41-1063(1); pursuant to the authority granted in § 41-327, the Director assessed an administrative penalty against insurance company in the

amount of \$1,000 which penalty was found to be reasonable. *Pan Am. Assurance Co. v. Department of Ins.*, 121 Idaho 884, 828 P.2d 913 (Ct. App. 1992).

**41-313. Capital funds required — Foreign insurers and new domestic insurers.** — (1) To qualify for and maintain authority to transact any one (1) kind of insurance (as defined in chapter 5) or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer shall possess and thereafter maintain unimpaired paid-up capital stock (if a stock insurer) or unimpaired basic surplus (if a mutual insurer or reciprocal insurer), and shall possess and thereafter maintain additional funds in surplus as follows:

| Kind or kinds of insurance   | Paid-up capital stock or basic surplus | Additional surplus |
|--|--|--------------------|
| Life .....   | \$1,000,000                            | \$1,000,000        |
| Disability .....   | 1,000,000                              | 1,000,000          |
| Life and disability .....  | 1,000,000                              | 1,000,000          |
| Property .....   | 1,000,000                              | 1,000,000          |
| General casualty .....   | 1,000,000                              | 1,000,000          |
| Marine and transportation .....  | 1,000,000                              | 1,000,000          |
| Vehicle .....  | 1,000,000                              | 1,000,000          |
| Surety .....   | 1,000,000                              | 1,000,000          |
| Any two of the following kinds of insurance:   |  |                    |
| Property, marine and transportation, general casualty, vehicle, surety, disability ..... | 1,000,000                              | 1,000,000          |
| Title .....  | 500,000                                | 500,000            |
| Multiple lines (all insurance except life and title insurance) .....                     | 1,000,000                              | 1,000,000          |
| Mortgage guaranty insurance .....  | 1,500,000                              | 1,500,000          |

(2) An insurer holding a valid certificate of authority to transact insurance in this state shall comply with the paid-up capital stock or basic surplus and additional surplus requirements set forth in subsection (1) of this section. The director shall not grant such an insurer authority to transact any other or additional kinds of insurance unless it then fully complies with the requirements as to paid-up capital stock and additional surplus (if a stock insurer) or basic surplus and additional surplus (if a mutual or foreign reciprocal insurer) as applied to all the kinds of insurance which it then proposes to transact.

(3) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this state.

(4) An insurance company holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 1995, shall have a period of three (3) years from and after that date within which to

comply with the increase in capital and surplus requirements. [1961, ch. 330, § 76, p. 645; am. 1969, ch. 214, § 6, p. 625; am. 1986, ch. 57, § 1, p. 164; am. 1993, ch. 279, § 3, p. 943; am. 1994, ch. 240, § 1, p. 751; am. 1995, ch. 96, § 1, p. 273.]

Compiler's notes. Sections 2 and 4 of S.L. 1993, ch. 279 are compiled as §§ 41-3613 and 41-3603, respectively.

Section 2 of S.L. 1994, ch. 240 is compiled as § 41-316.

Section 2 of S.L. 1995, ch. 96 is compiled as § 41-2820.

Section 13 of S.L. 1994, ch. 240 read: "Nothing contained in the provisions of this act is intended or shall repeal Section 36 of Chapter 194, Laws of 1993." Section 36 of S.L. 1993, ch. 194 provided, "For a period of twenty-four (24) months after the effective date of this act, an insurer may continue to hold any investment which was made prior to the effective date of this act and which, when made, was a lawful investment, and may carry such investment as an admitted asset at a value

calculated in accordance with the provisions of the Idaho Insurance Code as in effect immediately prior to the effective date of this act. Thereafter, the investment shall be held and valued in accordance with the Idaho Insurance Code, as then in effect, and to the extent that the investment exceeds any applicable limitations contained in the Idaho Insurance Code, as then in effect, the excess investment shall not be allowed as an admitted asset of the insurer."

Section 9 of S.L. 1995, ch. 96 declared an emergency. Approved March 13, 1995.

Sec. to sec. ref. This section is referred to in §§ 41-316, 41-511, 41-2703, 41-2820, 41-2825, 41-2855, 41-2906, 41-2908, 41-2926, 41-3613 and 41-4933.

**41-313A. Domestic reciprocal insurers with fewer than seven subscribers.** — Domestic reciprocal insurers with fewer than seven (7) subscribers which insure only worker's compensation risks and which only issue fully assessable policies are required, in lieu of the paid-up capital stock or basic surplus and additional surplus requirements of section 41-313, Idaho Code, to meet the security for payment of compensation standards set forth in section 72-301, Idaho Code; provided however, the securities required pursuant to this section shall be deposited with the director of the department of insurance as opposed to the industrial commission; provided further, all other rules, regulations or statutory requirements applicable to domestic reciprocal insurers administered by the director of the department of insurance remain applicable to reciprocal insurers meeting the requirements of this section. [I.C., § 41-313A, as added by 1993, ch. 279, § 5, p. 943.]

Compiler's notes. Section 4 of S.L. 1993, ch. 279 is compiled as § 41-3603.

Sec. to sec. ref. This section is referred to in §§ 41-2908, 41-3613.

**41-316. Deposit — Foreign or alien insurers.** — (1) This section shall apply as to all foreign and alien insurers.

(2) The director shall not authorize any foreign or alien insurer to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the director for the protection of all its policyholders or of all its policyholders and creditors, a deposit of cash or securities eligible for deposit under section 41-803, Idaho Code, in the amount of one million dollars (\$1,000,000), except that:

(a) As to foreign insurers, except foreign title insurers, in lieu of such Idaho deposit, the director shall accept the certificate in proper form of the public official having supervision over insurers in any other state that:

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Minutes

## HOUSE STATE AFFAIRS

DATE: March 10, 1998

TIME: 8:30 A.M.

PLACE: Room 412

MEMBERS: Crane, Deal, Stone, Loertscher, Newcomb, Tippetts, Alltus, Hornbeck, Kjellander, Field, Stevenson, Denney, Ellsworth, Jones, Kunz, McKague, Wheeler, Stoicheff, Marley, Judd, Henbest.

ABSENT/  
EXCUSED: All Present

Chairman Crane called the meeting to order at: 8:37 A.M.  
Representative Stone moved to approve the minutes with 2 minor changes. Motion Carried.

*Any referenced attachments made available to the committee are attached to the secretary's book and the library copy for permanent record.*

RS8194C1 Representative Hornbeck requested the committee introduce this RS in speaking for Representative Gagner. Representative Gagner explained that the two sides reached agreement on H750 and this RS is the result. Both are in agreement with the changes which he outlined line by line.

MOTION: Representative Stone moved to introduce RS8194C1 and send to the 2nd reading calendar. Motion Carried. Representative Stoicheff is recorded as being in opposition. Representative Tippetts disagreed with sending it to 2nd reading and thinks this issue needs a full hearing. Representative Hornbeck pointed out that they can speak to this in the Senate hearing. Representative Deal reiterated that both sides have worked hard on this and are compromised and happy. Motion Carried. Representatives Tippetts and Stoicheff are recorded as voting no.

RS8196 Representative Campbell requested introduction and have it sent to Resources and Conservation.

MOTION: Representative Hornbeck moved to introduce and send to Resources and Conservation. Motion Carried.

H801 Representative Hornbeck opened by explaining that this bill was written in 1870 and is archaic. Representative Henbest asked if there were any other solutions to this problem. Matt McKeown, Attorney General's office responded to that question by explaining the other sections of code where this also addressed and that it leaves a way to penalize a public official even if this change in code happens.

TESTIMONY: Rose Gehring, Idaho County Clerk gave a history as to the reason for this bill. Paul Palmer, in opposition, Idaho County resident. Stated Ms. Gehring was charged with a misdemeanor not a felony as Representative Hornbeck has been reporting. He feels she (the clerk) didn't do her job and repealing this section of code would take away the public's ability to get her out of office if need be.

MOTION: Representative Newcomb moved to send H801 to the floor with a do pass recommendation. No debate. Motion Carried. SPONSOR: Hornbeck



RS08195

Bryce Taylor, Bureau Chief for Dept. of Lands presented RS regarding land leases. Adds 4 parcels to the list that may be leased and adds 6 more for renewal of leases. Representative Stone moved to print RS8195. Motion Carried. Representative Stoicheff voted no.

MOTION:

H0774

Representative Deal opened with a statement to update since hearing last week. The financial questions have been addressed. This legislation would make a big step toward getting the State Insurance Fund organized.

Representative Ellsworth asked Representative Deal if there is a report on findings for this entity. Representative Deal: No official report, we have stacks of working papers but we don't have any of it here today.

MOTION:

Representative Stone moved to send H0744 to general orders. Representative Alltus changed the amendments to delete one sentence and Representative Stone corrected her motion to include that change. Debate: Representative Ellsworth: I have done a lot of research on this subject since we heard this last week. No real reports are in print to review regarding this issue. She produced an audit report, but it is primarily financial and does not include a performance review. Other states have reports and she reviewed those and had them in committee. Reading from Page 3 of H0774 she expressed her concerns about how broad based the organization of the new management arrangement is. Also on Page 2, line 27 the board shall receive \$50 for serving on the board.

Members of the legislature cannot receive compensation while sitting on a board or commission. Representative Newcomb clarified, the Governor can appoint you, you just can't receive the set compensation. Representative Ellsworth: The code is in conflict and there is no way to scrutinized this fund. Representative Newcomb asked about the audit that is done. Representative Ellsworth had a copy of the audit and pointed out that it doesn't address the compliance issue. There really doesn't seem to be any problem that surfaces in this audit to warrant this reorganization effort. I'd like to see us do an HCR to create an interim committee. Can I do that here? Chairman Crane: No. Representative Jones directed his question to Representative Deal regarding any opposition to the amendments. Representative Deal: No. Representative Deal closed by stating that this is not a major change in direction. This is to hire a manager with experience. Someone who would stay. As a political appointment this position is unable to attract candidates who have insurance experience and who are career oriented. They know they are only going to be here for 4 years. This also allows for the oversight needed. An interim committee might be a good idea and for now we also need this bill to get somebody hired.

SUBSTITUTE

MOTION:

Representative Ellsworth moved to hold H774 in committee. Debate: Representative Ellsworth: It's not a interim committee I want it's a legislative audit, in advance. A performance report. Representative Newcomb spoke up in opposition stating it wouldn't even be addressed until May and the fund doesn't have a manager. This may not be perfect but it's a step in the right direction. Representative Ellsworth: Can we put an emergency clause in an HCR? Representative Kunz expressed concern stating he was impressed with the work and information from Representative Deal and Mr. Alcorn but didn't feel educated enough in this area to know what to do here. Representative Deal: The fund is going through a difficult time. Nobody has been managing it. Nobody will come in, knowing they would only have a job for 8-9 months. They will go to a more secure job. Representative Alltus: This has good and not so good policy. But even the handouts as recent as the ones presented this morning still say, "owned by the State" on them. This is not owned by the State. Even though I made changes to these amendments I need to support the substitute motion. Representative Kunz: Who decides what agency and when an agency is subject to review by a performance evaluation? Representative Newcomb: A legislator can make a request for review. A background is done and then it's decided if one will be done. Representative Ellsworth: What are the salaries we're talking about here. Representative Deal didn't know. Representative Stoicheff asked if anyone knew Starr Kelso. Representative Alltus stated that he used to

work for the law firm who did work for the fund.

Chairman Crane called for a vote on the substitute motion to hold in committee. Motion Failed 10-11. Motion to send to General Orders passed with Representatives Alltus, McKague, Denney, Ellsworth, Hornbeck, Stoicheff, Wheeler, Kunz and Stevenson voting against it.

Committee was recessed for 10 minutes.

Reconvene: 10:15 A.M.

**S1446** Representative Kjellander explained the amendments brought forth by the sub committee. They took out some penalties for retailers and created a phase-in for the elimination of vending machines by the year 2000. Caps were placed on penalties and relief for training programs offered. The first offense isn't necessarily penalized based on the training in place.

**MOTION:** Representative Stone moved to send to general orders with amendments attached and moved to approve the SOP fiscal impact change. Representative Tippetts asked for an engrossed copy of the bill for the floor debate. Representative Stoicheff asked if the retailers are happy. Representative Deal responded to that question by explaining that there are still areas of great concern for the retailers. Seller assisted sales is still in there and the 2 inspections per year is still there. Representative Stone withdrew her motion based on the new information. Representative Tippetts re issued the motion as stated. Representative Hornbeck: Asked Representative Newcomb to yield: You said they can only get one citation per sting, is that in here and if so can you show me where. Caryn Esplin yielded but did not answer the question. Representative Hornbeck: That doesn't tell me where in this bill it says that. Representative Stone asked Representative Kjellander if he felt this would cause some small businesses to go under. He said he didn't know but that it was a concern of the sub committee. Chairman Crane called for a vote and the Motion Carried. Amendments: Tippetts, seconder: Deal. Representatives Hornbeck and McKague are recorded as voting No.

Meeting adjourned: 10:35 A.M.



Ron G. Crane, Chairman



Kathryn Mooney, Secretary

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| Name, Address, & Phone<br>PLEASE PRINT | Occupation            | Representing<br>Company/Organization | Legislation<br>Interested In | Wish to<br>Testify | Pro        | Con |
|--|-----------------------|--------------------------------------|------------------------------|--------------------|------------|-----|
| Paul Palmer                            | retiree               |                                      | 801<br>IC 19-4115            | Yes                |            | ✓   |
| Rosie Gehring                          | clerk                 | Idaho County                         | 801<br>IC 19-4115            | Yes                | ✓          |     |
| Wendy Patterson                        | lobbyist              | Dech Petroleum<br>Marketing Assoc.   | SB 1446                      |                    |            | ✓   |
| Bill Boden                             | attorney/lobbyist     | TI                                   | SB 1446                      | No                 |            | ✓   |
| Bob Wells                              | Lobbyist              | United States Tobacco                | SB 1446                      | No                 |            | ✓   |
| Kent Day                               | insurance<br>attorney | Liberty N.W. Ins                     | HB 774                       | No                 |            |     |
| STEVE BECKHAM                          | GOVT<br>AFFAIRS       | II                                   | HB 774                       | NO                 |            |     |
| Erica Curless                          | Spokesman - Review    |                                      |                              |                    |            |     |
| STEVE ATHRENS                          | PRESIDENT             | IACI                                 | H 774                        | NO                 | AS AMEND.  |     |
| John Graham                            | Manager               | ALMC                                 | H 774                        | No                 | As Amend.  |     |
| Matt Beebe                             | Businessman           | Self                                 | all                          | NO                 |            |     |
| Dawn Justice                           | HR DIR.               | IACI                                 | H 774                        | NO                 | as amended |     |
|  |                       |                                      |                              |                    |            |     |
|  |                       |                                      |                              |                    |            |     |
|  |                       |                                      |                              |                    |            |     |
|  |                       |                                      |                              |                    |            |     |
|  |                       |                                      |                              |                    |            |     |
|  |                       |                                      |                              |                    |            |     |

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## AGENDA

### SENATE COMMERCE & HUMAN RESOURCES

12:00 p.m. - 1:30 p.m.

ROOM 426

Thursday, March 19, 1998

| <i>BILL NO.</i> | <i>DESCRIPTION</i>   | <i>SPONSOR</i>  |
|-----------------|--|---|
|                 | <b>Minutes Approval</b>  |   |
| H 818           | Relating to Specialty Electricians, To Provide For Issuance of Licenses To Specialty Electricians By The Administrator of The Division of Building Safety.   | Sen. Cameron  |
| H 774a          | Relating To The State Insurance Fund, To Provide That The State Insurance Fund Is An Independent Body Corporate Politic, To Provide For Appointment Of The Board Of Directors Of The State Insurance Fund. | Sen. Cameron<br>Rep. Deal<br>Mike Brassey<br>Jim Alcorn |
| H 535           | Relating To General Contracts and Public Works Contracts, To Prohibit Clauses In Contracts Which Condition Payment for Performance on Payment by a Third Party & Provide Timing For Payment Due.           | Rep. Gagner   |
| H 534           | Relating To Listing of Subcontractors on Bid of General Contractor on Public Works   | Rep. Gagner   |

### AGENDA SUBJECT TO CHANGE

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**Sharon Ullman** addressed the committee in opposition to the bill and stated her concern was the structure of a manager appointed by a committee which is not appointed by the Governor. As Ms. Ullman continued with her testimony, Senator Cameron cautioned Ms. Ullman to address only the bill which was before the committee.

**Phil Barber**, representing **Idaho Council of the American Insurance Association**, addressed the committee in support of H 774. Mr. Barber stated that this bill preserves the original 1917 fundamental purpose and for the first time a regulatory oversight of an established process and established set of rules, regulations and statutes that govern its behavior. No Longer will insurance or claimants come to harass the governor or their legislators but now they have a public process of bringing complaints against the state fund where they can be administrated. Discussion followed.

**Dawn Justice, of Idaho Association of Commerce & Industry**, addressed the committee and stated IACI strongly supports H 774.

**MOTION**

The motion was made by **Senator Riggs** to send H 774 to the Senate Floor with a **DO PASS** recommendation with intent language. Seconded by **Senator Deide** and carried by voice vote. **Senator McLaughlin** will be the sponsor.

**H 535**

**Representative Gagner** presented H 535 and stated that this legislation clarifies that payment for work performed does not depend on payment from the owner to the general contractor, contract. Subcontractors and suppliers are to be paid as work is completed. Prevents late payment to subcontractors and suppliers.

**Merrily Munther, Attorney of Penland Munther Broadman**, addressed the committee and distributed a copy of her testimony, (exhibit a). Discussion and questions followed.

**Jerry Deckard**, representing **Associated General Contractors of Idaho**, addressed the committee in opposition to H 535. Mr. Deckard stated that he believed the proposed amendments would reduce competition and urged for the committee to hold H 535.

**Dennis Robinson, President of a Commercial General Contractors**, an association firm, builds and manages construction projects for the public and private sector. Mr. Robinson stated he apposed H 535 and that it was an attempt to legislate terms and relationships between contractors, sub-contractors and suppliers.

**Karleane Allen**, representing **Idaho Building Contractors Association**, addressed the committee and spoke in opposition to H 535. Discussion followed and Senator King asked how costs would be increased if H 535 was passed.

**Jeff Cates, NECA**, addressed the committee in support of H 535.

In response to discussion, **Representative Gagner** stated that the "pay when paid" clause is not good and subcontractors cannot get paid. **Representative Gagner** also stated that by passing H 535 it would improve the industry.

**MOTION**

The motion was made by **Senator King** to send H 535 to the Senate Floor with a **DO PASS** recommendation. Due to a lack of second H 535 will be held in committee.

**H 534**

**Representative Gagner** presented H 534 and stated that this legislation provides for a contract between the general contractor and subcontractor. It also assures coordination

has been accomplished prior to the bid and eliminates "bid shopping" after the low responsive bid has been determined.


**Jerry Deckard**, representing **Associated General Contractors of Idaho**, addressed the committee in opposition to H 534 and stated that on line 21 of the bill, what constitutes permission and how can that permission constitute an agreement. Mr. Deckard also expressed concern about what happens when an named electrical specialty contractor refuses to perform after the bid is awarded. Discussion followed.

**Merrily Munther, Attorney for Penland Munther Broadman**, distributed a written copy of her testimony (exhibit b). Discussion followed on bid shopping and building and zoning codes.

**MOTION** The motion was made by **Senator King** to send H 534 to the Senate Floor with a **DO PASS** recommendation. Due to the lack of a second H 534 will be held in committee.

**Senator Cameron** expressed his thanks to everyone for their diligence and hard work. **Senator Andreason** also expressed appreciation to everyone and enjoyed being on the Commerce and Human Resources Committee this year.

**ADJOURN** **Senator Cameron** announced the committee adjourned at 2:05 and would convene subject to call of the chairman.

  
Dean L. Cameron, Chairman

  
Paula Roam, Secretary

COMMERCE AND HUMAN RESOURCES COMMITTEE

VISITOR RECORD

DATE 3-19-98

| NAME                     | ASSOCIATION           | BILLS           | TESTIFY              | SUPPORT/<br>OPPOSE |
|--------------------------|-----------------------|-----------------|----------------------|--------------------|
| MIKE BRADY               |                       | H 771A          | YES                  | SUPPORT            |
| Jim Accorn               | DOI                   | H 771A          |                      | Support            |
| <del>Bill Hill</del>     | IMC                   | H 535           | <del>YES</del>       | <del>SUPPORT</del> |
| <del>Marky Munder</del>  | NECA + IMC            | <del>533</del>  | <del>YES</del>       | <del>SUPPORT</del> |
| Marilyn Munder           | NECA + IMC            | 534             | yes                  | Support            |
| JEFF CATES               | NECA                  | 534/535         | YES                  | SUPPORT            |
| DENNIS ROBINSON          | AGU                   | 534/535         | YES                  |                    |
| Bill Deal                | Dist 12 -             | H 771A          | IF Needed            | SUPPORT            |
| <del>John Gagny</del>    | DIST 30               | 535/534         | <del>YES</del>       | <del>SUPPORT</del> |
| Woody Pichard            | NAZZ                  | <del>806A</del> | YES                  | Support            |
| Jerry Decker             | AGC                   | 535, 534        | <del>YES</del>       | <del>SUPPORT</del> |
| Sharon Ullman            | N/A                   | 774             | <del>YES</del>       | oppose             |
| Phil BARBER              | AIA                   | H 771A          | "                    | Support            |
| <del>Bob CORBELL</del>   | IMC                   | 535/534         | <del>YES</del>       | <del>SUPPORT</del> |
| Dawn Justis              | IACI                  | H 771A          | yes                  | Support            |
| STEVE ARENS              | IACI                  | H 771A          | NO                   | SUPPORT            |
| ROBERT DEIBOZ            | A.G.C                 | 534, 535        | NO                   | OPPOSE             |
| <del>Johnnie Allen</del> | <del>IACI</del>       | 535             | <del>IF needed</del> | <del>oppose</del>  |
| Paul Jackson             | FARMERS INS           | H 771A          | NO                   |                    |
| Dave Goins               | Idaho Business Review |                 |                      |                    |
|                          |                       |                 |                      |                    |
|                          |                       |                 |                      |                    |
|                          |                       |                 |                      |                    |

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**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**ROLL CALL**

DATE: 3-19-98

| MEMBER                      | PRESENT        | ABSENT/EXCUSED |
|-----------------------------|----------------|----------------|
| Sen. Cameron,<br>Chairman   | ✓              |                |
| Sen. Crow,<br>Vice Chairman | ✓              |                |
| Sen. Andreason              | ✓              |                |
| Sen. Burtenshaw             | ✓              |                |
| Sen. Deide                  | ✓              |                |
| Sen. King                   | ✓              |                |
| Sen. Keough                 | <i>excused</i> |                |
| Sen. McLaughlin             | ✓              |                |
| Sen. Riggs                  | ✓              |                |

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Attorneys for Defendants Idaho State Insurance Fund and  
James M. Alcorn, Manager of the State Insurance Fund

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT ALAN  
BECKER and CRITTER CLINIC, an Idaho  
Professional Association,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE  
FUND, JAMES M. ALCORN, its Manager,  
and WILLIAM DEAL, WAYNE MEYER,  
MARGUERITE McLAUGHLIN,  
GERALD GEDDES, MILFORD  
TERRELL, JUDI DANIELSON, JOHN  
GOEDDE, ELAINE MARTIN, and MARK  
SNODGRASS in their capacity as member  
of the Board of Directors of the State  
Insurance Fund,

Defendants.

Case No. CV06-7877

**IDAHO STATE INSURANCE  
FUND'S RESPONSES TO  
PLAINTIFFS' THIRD SET OF  
DISCOVERY REQUESTS:  
INTERROGATORIES NO: 15-18,**

**RECEIVED**  
OCT 21 2006

**GORDON LAW OFFICES**

COMES NOW defendant, Idaho State Insurance Fund (hereinafter "SIF"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and hereby responds to Plaintiffs Third Set of Requests: Interrogatories No.: 15-18 to Defendant Idaho State Insurance Fund, propounded by plaintiffs on September 14, 2006, as follows.

### INTERROGATORIES

**INTERROGATORY NO. 15:** If you deny Request for Admission No. 150, please state, exactly how you have determined that the cost of issuing a policy to policy holder who pays a premium of \$2,500.00 or less exceeds the paid premium.

**ANSWER TO INTERROGATORY NO. 15:** Please see Answer to Interrogatory No. 2 in the Idaho State Insurance Fund's Answers to Plaintiff's First of Interrogatories dated October 11, 2006.

**INTERROGATORY NO. 16:** If you deny Request for Admission No.151, please state, exactly, how you have determined that the cost of administering a policy to a policy holder who pays a premium of \$2,500.00 or less exceeds the paid premium.

**ANSWER TO INTERROGATORY NO. 16:** Please see Answer to Interrogatory No. 2 in the Idaho State Insurance Fund's Answers to Plaintiff's First of Interrogatories dated October 11, 2006.

**INTERROGATORY NO. 17:** With respect to any decision to pay dividends made in fiscal year 2000 or at any time thereafter please state, with respect to each such decision, the following information:

- a. the *dividend period*;
- b. the formula on which *dividends to policyholders* was based;
- c. the total amount of all *dividends* paid to *policyholders*;
- d. the total number of *policy holders* who had been *policy holders* for a period or [sic] six months or more prior to the end of the *dividend period*.

- e. the total number of premium dollars paid or owed by *policy holders* for coverage provided to them by the Fund during the *dividend period*;
- d. [sic] the number of *policyholders* who did not receive a *dividend* solely because their *policy premium* was \$2,500 or less and for this entire group of *policy holders* the percent of the total premium dollars paid or owed by these *policy holders* for coverage provided to them by the Fund during the *dividend period*;
- e. [sic] the number of *policyholders* who did receive a dividend and for this entire group of *policy holders* the percent of the total premium dollars paid or owed by these *policy holders* for coverage provided to them by the Fund during the dividend period.

**ANSWER TO INTERROGATORY NO. 17:** The SIF objects to this Interrogatory on the grounds that the interrogatory is overbroad and unduly burdensome. The SIF further objects to the extent this Interrogatory is vague, ambiguous, and misleading as to the information sought given the following: The Fund operates on a calendar year basis whereas dividends are based upon a policy year based upon the inception date of the policy which must occur within a one year period extending from July 1 of one year to June 30 of the following year. As such, it is difficult to ascertain whether the responses hereto are accurate since the database which contains the information operates in real time, and therefore, information and data within the system are updated on an ongoing basis. However, unless otherwise noted, all figures set forth below are as indicated by the Idaho State Insurance Fund database as of October 16, 2006 and could reflect changes in charged premium due to audits and/or changes in reported losses occurring subsequent to the date of the dividend.

As a result, there is the possibility that some of the information supplied in response to this Interrogatory may not accurately reflect the information and/or data in the database prior to, at, or after the dividends were declared. Subject to and without waiving these objections, the following information is supplied in answer to Interrogatory No. 17:

For Dividends declared in 2000:

- a. Policies with inception dates between July 1, 1998 and June 30, 1999

- b. See response to Interrogatory 3(b)
- c. Approximately Thirty-Two Million Four Hundred Seventy Thousand One Hundred Sixty-Six Dollars (\$32,470,166), is the amount of dividend paid in 2000 as reflected on line 14A in the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2000, Underwriting and Investment Exhibit.
- d. Approximately Twenty-Five Thousand Four Hundred Ninety-Eight (25,498)
- e. Approximately Ninety-Seven Million Six Hundred Seventy-Two Thousand Two Hundred Fifty-Six Dollars (\$97,672,256).
- d. (sic) Zero (0) policies
- e. (sic) Approximately Twenty-Three Thousand Eight Hundred Ninety-One (23,891) policies comprising approximately 82% of the total premium dollars charged for the respective dividend period.

For Dividends declared in 2001:

- a. Policies with inception dates between July 1, 1999 and June 30, 2000
- b. See response to Interrogatory 3(b)
- c. Approximately Twenty-Four Million Seven-Hundred Forty Thousand Three Hundred Seventy-One Dollars (\$24,740,371), is the amount of dividend paid in 2001 as reflected on line 16 of the Underwriting and Investment Exhibit to the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2001.
- d. Approximately Twenty-Six Thousand Six Hundred Sixteen (26,616) policies

e. Approximately One Hundred Two Million Six Hundred Ninety Thousand Two Hundred Seventy-Four Dollars (\$102,690,274).

d. (sic) Zero (0) policies

e. (sic) Approximately Twenty-Four Thousand Eight Hundred Twenty-Six (24,826) policies comprising approximately 81% of the total premium dollars charged for the respective dividend period.

For Dividends declared in 2002:

a. Policies with inception dates between July 1, 2000 and June 30, 2001

b. See response to Interrogatory 3(b)

c. Approximately Four Million Five Hundred Fifty-Two Dollars (\$4,000,552), is the amount of dividend paid in 2002 as reflected on line 17 of the Underwriting and Investment Exhibit to the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2002.

d. Approximately Twenty-Seven Thousand Six Hundred Thirty (27,630) policies

e. Approximately One Hundred Fourteen Million Five Hundred Four Thousand Four Hundred Eighty-Seven Dollars (\$114,504,487).

d. (sic) Approximately Nineteen Thousand Five Hundred Thirty-One (19,531) policies comprising approximately 12% of the total premium dollars charged for the respective dividend period.

e. (sic) Approximately Five Thousand Nine Hundred Seventy (5,970) policies comprising approximately 52% of the total premium dollars charged for the respective dividend period.

For Dividends declared in 2003:

- a. Policies with inception dates between, July 1, 2001, and June 30, 2002
- b. See response to Interrogatory 3(b)
- c. Approximately Five Million Thirty-Five Thousand Five Hundred Ninety-Two Dollars (\$5,035,592), is the amount of dividend paid in 2003 as reflected on line 17 of the Underwriting and Investment Exhibit to the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2003.
- d. Approximately Twenty-Nine Thousand One Hundred Twenty (29,120) policies
- e. Approximately One Hundred Twenty-Eight Million Five Hundred Twenty-Nine Thousand One Hundred Seventy-Four Thousand Dollars (\$128,529,174).
- d. (sic) Approximately Twenty Thousand Three Hundred Twenty-Two (20,322) policies comprising approximately 11% of the total premium dollars charged for the respective dividend period.
- e. (sic) Approximately Six Thousand Four Hundred Ninety-One (6,491) policies comprising approximately 60% of the total premium dollars charged for the respective dividend period.

For Dividends declared in 2004:

- a. Policies with inception dates between July 1, 2002 and June 30, 2003
- b. See response to Interrogatory 3(b)
- c. Approximately Five Million Nine Hundred Ninety-Two Thousand Three Hundred Ninety-Two Dollars (\$5,992,392), is the amount of dividend paid in 2004 as reflected on line 17 of the Underwriting and Investment Exhibit to the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2004.

d. Approximately Thirty-One Thousand Three Hundred Thirty Six (31,336) policies

e. Approximately One Hundred Fifty-One Million One Hundred Forty-Two Thousand Three Hundred Sixty-Six Dollars (\$151,142,366).

d. (sic) Approximately Twenty-One Thousand Four Hundred Ninety-Five (21,495) policies comprising approximately 10% of the total premium dollars charged for the respective dividend period.

e. (sic) Approximately Seven Thousand Four Hundred Fifty-Five (7,455) policies comprising approximately 57% of the total premium dollars charged for the respective dividend period.

For Dividends declared in 2005:

a. Policies with inception dates between July 1, 2003, and June 30, 2004

b. See response to Interrogatory 3(b)

c. Approximately Eight Million Ninety-Nine Thousand Nine Hundred Forty Dollars (\$8,099,940), is the amount of dividend paid in 2005 as reflected on line 17 of the Statement of Income to the Annual Statement of the Idaho State Insurance Fund for the year ended December 31, 2000.

d. Approximately Thirty-Four Thousand Four Hundred Seventy-Two (34,472) policies

e. Approximately One Hundred Eighty-One Million Eight Hundred Thirty-Six Thousand Three Hundred Seventy-Four Dollars (\$181,836,374).

d. (sic) Approximately Twenty Three Thousand One Hundred Fifty Nine (23159) policies comprising approximately 9% of the total premium dollars charged for the respective dividend period.

e. (sic) Approximately Eight Thousand Seven Hundred Twenty-One (8,721) policies comprising approximately 72% of the total premium dollars charged for the respective dividend period.

**INTERROGATORY NO. 18:** If you contend that either account balances attributable to either particular classes of employment or particular industries were considered, utilized, referred to or relied upon in determining whether to pay a dividend or how much dividend to pay, then please explain the precise process used and all the factors considered in determining whether to pay a dividend or how much to pay.

**ANSWER TO INTERROGATORY NO. 18:** Please see Answer to Interrogatory No. 2 in the Idaho State Insurance Fund's Answers to Plaintiff's First of Interrogatories dated October 11, 2006.



DATED this 20<sup>th</sup> day of October, 2006.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By Keely E. Duke  
Richard E. Hall - Of the Firm  
Keely E. Duke - Of the Firm  
Attorneys for Defendants Idaho State Insurance  
Fund and James M. Alcorn, Manager of the State  
Insurance Fund

VERIFICATION

STATE OF IDAHO )  
                          ) ss.  
County of Ada     )

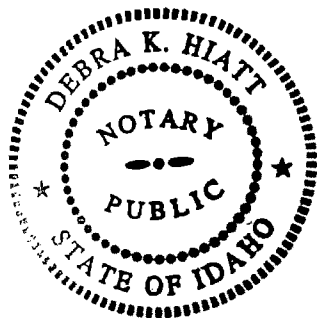
James M. AICORN, being first duly sworn upon oath, deposes and says:

That I am the Manager of the Idaho State Insurance Fund, one of the defendants in the above-entitled action, and that I have read the foregoing document and to the best of my knowledge and information available to me at this time, believe the same to be true.

IDAHO STATE INSURANCE FUND

By: [Signature]  
Is: Manager

SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of October, 2006.



Debra K. Hiatt  
Notary Public for: Idaho  
Residing at Boise  
My Commission expires: 11-8-07



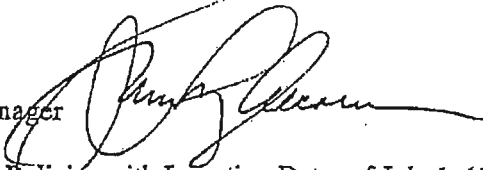
COPY

# STATE INSURANCE FUND

1215 W. STATE STREET • P.O. BOX 83720 • BOISE, IDAHO 83720-0044  
PHONE (208) 332-2100 • (800) 334-2370

## MEMORANDUM

Date: December 7, 2000

From: James M. Alcorn, Manager 

Subject: Dividend Formula for Policies with Inception Dates of July 1, 1998 to June 30, 1999

Loss Adjustment Expense 18% for all policies

| Premium Size        | Underwriting Expense | Return Percentage |
|---------------------|----------------------|-------------------|
| <1,999.99           | 45%                  | 42%               |
| 2,000 to 7,499.99   | 23%                  | 57%               |
| 7,500 to 14,999.99  | 20%                  | 62%               |
| 15,000 to 22,499.99 | 18%                  | 67%               |
| 22,500 to 29,999.99 | 15%                  | 72%               |
| 30,000 to 39,999.99 | 11%                  | 77%               |
| >40,000             | 9%                   | 82%               |

|                                    |   |  |  |  |  |
|------------------------------------|---|--|--|--|--|
| <i>Service Locations Statewide</i> | <b>Coeur d'Alene</b><br>Harbor Center, Suite 100<br>1000 W. Hubbard Street<br>Coeur d'Alene, ID 83814<br>208/769-1513 | <b>Lewiston</b><br>1118 F Street<br>Lewiston, ID 83501<br>208/789-5050 | <b>Pocatello</b><br>353 North 4 <sup>th</sup> , Suite 280<br>Pocatello, ID 83201<br>208/238-8412 | <b>Twin Falls</b><br>621 N. College Road<br>Twin Falls, ID 83301<br>208/738-3064 | <b>Idaho Falls</b><br>625 Park Avenue<br>Suite 2C<br>Idaho Falls, ID 83402<br>208/525-7287 |
|------------------------------------|---|--|--|--|--|

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## DIVIDEND FORMULA DECLARED 2001

Premium - Underwriting Expense - (Losses X Loss Adj. Exp) =  
Underwriting gain X Return percentage = DIVIDEND

Loss Adj Expense = 18% - All policies

| PREMIUM SIZE       | UND<br>EXP | DIV<br>RET % | MAX<br>DIVIDEND % | MAX LOSS<br>RATIO |
|--------------------|------------|--------------|-------------------|-------------------|
| \$ 0 - 2,000       | 50%        | 35%          | 17.5%             | 42.5%             |
| \$ 2,000 - 7,500   | 30%        | 45%          | 31.5%             | 59.4%             |
| \$ 7,500 - 15,000  | 25%        | 50%          | 37.5%             | 63.6%             |
| \$ 15,000 - 22,500 | 21%        | 55%          | 43.5%             | 66.9%             |
| \$ 22,500 - 30,000 | 19%        | 60%          | 48.6%             | 68.7%             |
| \$ 30,000 - 40,000 | 16%        | 65%          | 54.6%             | 71.2%             |
| \$ 40,000 - up     | 14%        | 70%          | 60.2%             | 72.9%             |

Example:

|        |                       |
|--------|-----------------------|
| 60,000 | Premium               |
| -8,400 | Und Expense -14%      |
| 51,600 |                       |
| -7,080 | Losses (6,000 X 1.18) |
| 44,520 | Underwriting gain     |
| X .70  | Return percentage     |
| 31,164 | Dividend = 51.9%      |

Example:

|        |                       |
|--------|-----------------------|
| 15,000 | Premium               |
| -3,750 | Und Expense - 25%     |
| 11,250 |                       |
| -1,770 | Losses (1,500 X 1.18) |
| 9,480  | Underwriting gain     |
| X .50  | Return percentage     |
| 4,740  | Dividend = 49.4%      |

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# STATE INSURANCE FUND

1215 W. STATE STREET • P.O. BOX 83720 • BOISE, IDAHO 83720-0044  
PHONE (208) 332-2100 • (800) 334-2370

## MEMORANDUM

Date: December 5, 2001

From: James M. Alcorn, Manager 

Subject: Dividend Formula for Policies with Inception Dates of July 1, 1999 to June 30, 2000

Loss Adjustment Expense 18% for all policies

| Premium Size        | Underwriting Expense | Return Percentage |
|---------------------|----------------------|-------------------|
| <1,999.99           | 50%                  | 35%               |
| 2,000 to 7,499.99   | 30%                  | 45%               |
| 7,500 to 14,999.99  | 25%                  | 50%               |
| 15,000 to 22,499.99 | 21%                  | 55%               |
| 22,500 to 29,999.99 | 19%                  | 60%               |
| 30,000 to 39,999.99 | 16%                  | 65%               |
| >40,000             | 14%                  | 70%               |

Service  
Locations  
Statewide

**Coeur d'Alene**  
Harbor Center, Suite 100  
1000 W. Hubbard Street  
Coeur d'Alene, ID 83814  
208/769-1613

**Lewiston**  
1118 F Street  
Lewiston, ID 83501  
208/789-5050

**Pocatello**  
353 North 4<sup>th</sup>, Suite 280  
Pocatello, ID 83201  
208/236-6412

**Twin Falls**  
621 N. College Road  
Twin Falls, ID 83301  
208/738-3064

**Idaho Falls**  
625 Park Avenue  
Suite 2C  
Idaho Falls, ID 83402  
208/525-7287

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1 If you're going to find a percentage, you've  
2 got to have a numerator and a denominator, or X over Y.

3 And my question to you is when you calculate  
4 these percentages, what is in the numerator and what is  
5 in the denominator?

6 A. Well, I think you were discussing this before.  
7 You work through the formula, you come up with an amount  
8 of money that is left that is available from the dividend  
9 from that policy, then you apply that percentage to it.

10 Q. But you haven't told me how you got to the  
11 percentage.

12 A. You take the policy, subtract off the retention  
13 percentage, subtract off the losses, 118 percent. What  
14 is left over you apply the return percentage to.

15 Q. All right. But how did you derive the return  
16 percentage? In order to find a percent there has to be a  
17 numerator and a denominator.

18 A. Basically, again, what we were talking about is  
19 you look at the amount of money that you have available  
20 to dividend. So the percentages that come up here are  
21 basically the percentages that work out to be able to  
22 return that total amount of money that you want to return  
23 back to the policyholders.

24 Q. It may be late and I may be really thick, but  
25 I'm not understanding your answer. And I don't mean to

**Board of Directors of the State Insurance Fund  
Minutes of November 21, 2002 Special Meeting**

**Board Members Present:**

Bill Deal, Chairman, Agents Representative  
Representative Wayne Meyer, Vice Chairman, Legislative Representative  
Senator John Goedde, Legislative Representative  
Gerald Geddes, Employees Representative  
Milford Terrell, Employer Representative

In addition to the Board members, the following individuals attended all, or a portion of, the meeting:

James M. Alcorn – Manager, State Insurance Fund  
George Parham – Chief Legal Counsel, State Insurance Fund  
Debbie Hiatt – Secretary, State Insurance Fund  
Peter Marshall – Attorney, Marshall, Batt and Fisher  
Doug Dorn – Investment Consultant  
Becky Gratsinger – R.V. Kuhns & Associates, Inc.  
Josh Kevan – R.V. Kuhns & Associates, Inc.

Pursuant to the posted notice of the meeting and agenda, Chairman Deal called the Special Meeting of the Board of Directors of the State Insurance Fund to order at 9:00 a.m. The absence of Milford Terrell was noted.

Mr. Alcorn welcomed Doug Dorn and introduced Becky Gratsinger and Josh Kevan from R.V. Kuhn & Associates, Inc. (RVK). Mr. Alcorn explained the new business relationship with RVK as investment consultants to provide consulting opinions and recommendations on investments made by the Endowment Board.

Mr. Terrell joined the meeting at 9:05 a.m.

Ms. Gratsinger provided a brief resume of her qualifications, and the history RVK. Mr. Kevan introduced himself and reviewed his qualifications. There being no specific questions by the Board, Chairman Deal thanked the representatives of RVK. Ms. Gratsinger, Mr. Kevan and Mr. Dorn left the meeting at 9:13 a.m.

Chairman Deal explained the purpose of the special meeting was to discuss the 2003 dividend.

Mr. Alcorn provided the following information on the Fund for the Board to consider when discussing a proposed dividend:

- There is currently \$132-133 million worth of premium.
- The Fund has approximately 30,000 policies.
- There is approximately \$74 million in surplus.
- Investment income is down \$9.9 million from the start of the year, but it changes on a daily basis.

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- The State Insurance Fund is extremely solvent.
- Reinsurance coverage was changed from catastrophic and individual coverage, to catastrophic coverage only, which provides a greater liability than in the past. The largest concentration of state employees is in the "towers" where the Health and Welfare employees are housed.
- The Fund is not a member of the Guarantee Association so the Fund needs to be more conservative.
- The Fund gave large dividends over the past years based on money accumulated during the 90's.
- He would like to keep the fund at a 2-1 premium to surplus ratio.
- The Fund is showing a \$4.7 million profit to date.

Mr. Alcorn stated that he could be very conservative and not issue a dividend. He realizes policyholders have come to expect a dividend, but a strong case could be made for no dividend.

Mr. Terrell reviewed the \$74 million surplus and \$5 million in investments, and asked the Manger to review the down side of 2000 and 2001. Mr. Alcorn responded that before dividends, there was \$18 million worth of profit in 2001, and \$6.8 million in year 2000.

Mr. Terrell asked the amount of dividends paid the last two years. Mr. Alcorn responded the Fund paid out \$24.7 million in 2001 and \$32.4 in 2000.

Mr. Alcorn feels the Board should look at whether a dividend should be given to the smaller policies, and stated now may be the time to consider changing the procedures. The down side to not offering a dividend to the smaller policies (\$2000 and below) is that 20,000 of the 30,000 policyholders have \$2000 or less in premium. The under \$2000 policyholders account for \$12 million worth of the premium. The other \$120 million premium is received from the 10,000 policies that are over \$2000.

Senator Goedde indicated he has been a proponent of a policy fee for a long time and suggested that perhaps a policy fee could be taken off any dividend paid, which would eliminate the smaller policies from actually getting a dividend. Mr. Terrell agreed with Senator Goedde and asked what the cost of paperwork is to set up for a new policy. He agrees with an up-front fee, but no dividend. He indicated that is the cost of business and that no money is made on smaller accounts, but on the larger accounts. Mr. Alcorn concurred, but said we need to discuss both the pros and cons.

Mr. Alcorn stated that policyholders are used to getting dividends so he knows he'll "take heat", for having a lower dividend or no dividend at all. He also said that some policyholders feel, in error, that they are getting tax money back.

Mr. Alcorn noted that the Fund writes business that other companies will not write, and tries to accommodate those accounts rather than having them assigned to the Assigned Risk Pool. Policyholders in the Risk Pool lose the 15% deviation and have 30% additional premium, so the

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Fund is saving those policyholders 45%. Mr. Terrell said other companies are also cutting back and feels the Fund has gone the extra mile to provide service to those policyholders.

Mr. Terrell encouraged the Board to talk about eliminating dividends to the smaller policies, but pay dividends only to the larger policies. He also wanted to note, for the record, that his company is not insured with the State Insurance Fund, so his recommendation is not self-served.

Mr. Geddes inquired about the investment income; Mr. Alcorn responded \$4.7 million. The combined loss ratio is 103-104%, which means for every \$1 in premium, the costs and operating expenses are \$1.03. Mr. Alcorn said he wants to stay at a 100% combined loss ratio and make up the difference on investments.

Mr. Geddes questioned the change in deviation. Mr. Alcorn reminded the Board that at the last meeting, it was decided to deviate 7% next year.

Mr. Geddes asked if Mr. Alcorn anticipates investment income to be the same as this year; Mr. Alcorn said he hopes it will be better, but it is hard to forecast as it changes on a day-to-day basis. Mr. Alcorn explained the Fund invests conservatively and has a lot invested in bonds.

Representative Meyer asked if the Fund could legally charge a fee as Senator Goedde suggested earlier. Mr. Alcorn responded that the Fund could not and that any fees would have to be set by the Department of Insurance and NCCI.

Chairman Deal stated the Board needs to realize the marketplace is different this year. He feels that after visiting with some other larger agencies, the approach to draw a line at a level where no dividends are paid is acceptable. He said if the Fund is taking accounts no other insurance company will take, the losses will increase due to those smaller companies being added to the Fund's base. He further stated the medical inflation of 17-19% needs to also be considered.

Chairman Deal said his recommendation would be no dividend on smaller policies (\$2,000 or \$2,500) and work with a formula where loss ratio is taken into consideration so only companies who earn a dividend should receive one. Mr. Alcorn agreed.

Mr. Terrell recommended that the Board instruct Mr. Alcorn to consider no dividend for policies of \$2,500 or less, and to look at a total dividend around \$4 million and keep \$1 million in retained earnings. Senator Goedde said the Board also needs to consider a reduced deviation next year so more money can go to surplus.

Representative Meyer agrees with Mr. Terrell's recommendation.

Mr. Geddes also feels it is all right, and would like \$4-5 million paid out to only policies making a profit for the Fund.

Senator Goedde concurred with the other Board members.

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Chairman Deal reiterated the consensus of the Board that policies of \$2,500 or less in premium would receive no dividend, and the Fund would issue a total dividend around \$4 million.

Chairman Deal thanked the Board for their input and discussions. There being no other business before the Board, the meeting was adjourned at 10:05 a.m.

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